TRANSACTIONS OF

THE GROTIUS SOCIETY

(Founded 1915)

VOLUME V

PROBLEMS OF PEACE AND WAR

PAPERS READ BEFORE THE SOCIETY IN THE YEAR 1919

Price to Non-Members Six Shillings net

LONDON:
SWEET AND MAXWELL, LIMITED
3 CHANCERY LANE, W.C. 2
1920

John Macdonell

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CONTENTS.

EDITORIAL NOTE.

During the past year the Society has very naturally turned its attention chiefly to the consideration of some of the problems connected with the conclusion of peace, although it has not omitted to deal with some of the many problems connected with the War. In these circumstances it has been thought not unfitting to give to this volume the sub-title of "Problems of Peace and War."

In former volumes, in the case of a few papers, a summary of the discussion has been given. A desire having been expressed that this course should be adopted generally, an attempt has been made in the present volume to add such a summary to all the papers here presented. Nevertheless, the summary does not in every case represent the views of the meeting. For instance, in the case of the paper on "Islam in the League of Nations," owing to want of time, several members who desired to express their dissent from some of the views contained therein, were unable to do so.

The Society, in conjunction with the International Law Association, has taken larger premises at 2, King's Bench Walk, Temple, in which adequate space for the Library is now available. It is hoped to form as complete a collection as possible of text-books and documents, British and foreign, relating to International Law, which will be available for consultation by members at any hour of the day. The Society is already indebted to Sir Graham Bower for some scarce and valuable books. Contributions have also been made by Sir John Macdonell, Mr. Wyndham A. Bewes,

Mr. Richard King, and myself. All members are invited to assist in this attempt to establish a Library worthy of the reputation of the Society.

Members desirous or willing to read papers before the Society are requested to communicate with the Hon. Secretaries.

Owing to unavoidable delay in publication, it has been found possible to include in this volume Miss Sophy Sanger's paper on "Labour Legislation under the League of Nations."

Mr. H. S. Q. Henriques has very kindly assisted in revising the proofs of this volume for the press.

HUGH H. L. BELLOT.

February 16*th*, 1920.

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THE GROTIUS SOCIETY.

(Founded 1915.)

RULES.

Name and Seat.

1. The name of the Society shall be "THE GROTIUS SOCIETY."

It shall be a British Society and its meetings are intended to take place in the United Kingdom.

Objects.

2. The objects of the Society shall be to afford facilities for discussion of the Laws of War and Peace, and for interchange of opinions regarding their operation, and to make suggestions for their reform, and generally to advance the study of International Law.

Members.

3. In addition to the persons mentioned in the next Rule, the Society shall consist of such persons as have shewn themselves in the opinion of the Executive Committee to be qualified to further the objects of the Society, who shall intimate to the Secretary their wish to become members, and who shall duly pay their annual subscriptions. Every candidate shall be proposed and seconded by members of the Society. Provided that no one shall be deemed to be a member until his admission as such shall be notified to him.

Original Members and Officers.

4. The persons who join the Society on its foundation shall be original members and shall elect for the first year the President, Vice-President, Honorary Secretary or Secretaries, and Honorary Treasurer. The persons so elected shall be styled the Officers of the Society. They shall hold office for one year, but shall be eligible for re-election at the Annual General Meeting. No Officer, except the Treasurer and the Secretary, shall hold office for more than two consecutive years.

Subscriptions and Expenses.

5. All expenses of the Society shall be met from subscriptions of the members and from such funds as the Society may by donation or otherwise acquire. The annual subscription of each member shall be 10*s*., but a composition of £5 shall con-

stitute a life member. No subscriptions shall be payable by honorary members. The subscriptions and all other property acquired for the purposes of the Society shall be deemed to be vested in the Officers of the Society as trustees for the members. No expenditure shall be made or incurred beyond the amount of the funds in the hands of the Treasurer.

Management.

6. The affairs of the Society shall be managed by an Executive Committee consisting of the past Presidents and the Officers of the Society and ten additional members elected together with the Officers annually by the members of the Society at its Annual General Meeting. Subject to the control of any General Meeting and to the provisions of Rule 5 hereof, the Executive Committee (of whom four shall be a quorum) shall be entitled to take any action on behalf of the Society which it shall hold to be conducive to its interest. It shall be its duty to present a report of its proceedings to the Annual General Meeting of the Society. Casual vacancies among the Officers or other members of the Executive Committee may be filled up by co-optation of the Executive Committee until the next Annual General Meeting.

7. The Annual General Meeting of the Society shall be held on the 10th day of April, being the birthday of Hugo Grotius, or on such other convenient day in April of each year as the Executive Committee shall fix.

8. It shall be in the power of the Society at an ordinary meeting to elect both honorary and corresponding members, whether of British or foreign nationality. Visitors may also be invited by any member of the Executive Committee to attend any of the meetings of the Society, and the Executive Committee may invite non-members to read papers, if willing to do so. It shall be in the power of the Executive Committee of the Society to delegate representatives to attend conferences at home and abroad dealing with subjects within the objects of the Society.

9. No one shall continue to be a member of the Society whose subscription is more than one year in arrear unless an excuse satisfactory to the Committee is offered by him.

MINUTES OF THE PROCEEDINGS

OF THE

FOURTH ANNUAL GENERAL MEETING.

May 13th, 1919.

At the Annual Meeting of the Society held at 2, King's Bench Walk, Temple, E.C., on 13th May, 1919, at 4.30 p.m.

There were present Professor Goudy (in the chair), Sir John Macdonell, Sir Graham Bower, Mr. E. A. Whittuck, Mr. H. S. Q. Henriques, Hon. I. Yoshida, Dr. Evans Darby, Mr. G. G. Phillimore, Mr. Weir-Brown, Mr. Wyndham A. Bewes, Dr. E. J. Schuster, and the Hon. Secretaries, Dr. Bellot and Mr. Carter.

The minutes of the previous annual general meeting having been circulated were taken as read, and were confirmed.

The Report of the Executive Committee was received, and the Statement of Receipts and Payments for the year ending April 10th, 1919, signed by Mr. Manisty and Dr. W. R. Bisschop, as auditors, was received and approved.

On the proposal of Professor Goudy, seconded by Dr. Evans Darby, Sir John Macdonell was unanimously elected President.

Sir John thereupon, at the request of Professor Goudy, took the chair.

On the proposal of Professor Goudy, Sir Graham Bower was unanimously elected Vice-President.

Upon the recommendation of the Executive Committee, resolved that the words "the Treasurer and" be added after the word "except" in Rule 4.

Upon the proposal of Professor Goudy, Dr. E. J. Schuster was unanimously re-elected Treasurer.

Upon the proposal of Sir John Macdonell, the Hon. Secretaries, Dr. Bellot and Mr. Carter, were unanimously re-elected.

The Rev. T. J. Lawrence having intimated his desire to retire from the Executive Committee, on the proposal of Mr. Phillimore, seconded by Dr. Schuster, Mr. Wyndham A. Bewes was elected in his place, and the remaining members were re-elected.

Upon the recommendation of the Executive Committee, the following were unanimously elected ordinary members, viz.:—Captain V. Brandon, R.N., Lieut.-Commander John Graham Bower, R.N., D.S.O., Mr. W. S. M. Knight, Admiral Sir Reginald Custance, K.C.B., K.C.M.G., and Dr. Coleman Phillipson.

Sir John Macdonell then delivered his Address.

THE INFLUENCE OF GROTIUS.

An Address delivered by Sir John Macdonell on 13th May, 1919.

I thank you, gentlemen, for the honour which you have done me in electing me to succeed Professor Goudy. I esteem it a privilege to follow one who has laboured for the welfare of the Society with great success, who has left it in a flourishing condition and with prospects of future usefulness, in the main due to him and the energetic secretaries of the Society. It was founded in critical times, when international law was said to be dead, and when, no doubt, the work of Grotius and his successors was in peril. It continues that work to-day under, we may hope, much more favourable circumstances; when new desires, hopes and ideals prevail; when efforts of a kind unknown before and on the part of men who have hitherto stood aloof, incredulous or scoffing, are being made to reconstruct and strengthen that law—efforts in which I trust this Society will take its share—and at a time when it is universally felt that unless that law becomes a reality, civilisation itself is in sore peril. Though still young, the Society can point with pride to its transactions. It has often met to discuss important subjects. Its printed papers and proceedings already run to four volumes, with most varied contents.

Speculating upon what Grotius would have thought of the work being done under his name, I am bold enough to believe that he would have approved of the efforts, characteristic of the great mass of it, to combine research and learning with practical wisdom and to steer clear alike of sciolism, pedantry and ignorance. Meeting here nearly three hundred years after the death of the author of *De Jure Belli ac Pacis*, I have asked myself the question, which must have pressed upon you, What is the secret of the permanent influence of Grotius, and of the fact that now, centuries after the

appearance of his work, it is still a living book? Not that it contains deep thoughts or profound analysis, or that it is eminently original. Not that it is free from the pedantry of the age in which it appeared, or that Grotius was proof against political prejudices. Far from his being a very original thinker, there is no sign in his many books or letters that he was alive to the new thoughts stirring men's minds in the first half of the seventeenth century.

The contemporary of Bacon and Descartes and Bruno, the countryman of Spinoza, he had faint perception, so far as I can find, of the great subversive movement then in progress. He commented upon the Apocalypse. He wrote fluent Latin verses. He was zealous and industrious in his search for the purity of the texts of the obscurer classics. His activity ran out into many directions and into some of them I have not been able to follow him. His theological works are buried in four folios: a *terra incognita* to this generation. To his countrymen he seemed a marvel such as the world had never before seen. The inscription on his tomb describes him, "Prodigium Europæ," "Virtutis Imago," &c.; epithets honestly believed in and frequently repeated. But, so far as I know his works, they contain little that was new even to his own generation. I have examined a few of them outside the domain of law, and I have not found in them distinct traces of originality. He was a voluminous historian. He imitated the brevity and terseness of style of Tacitus without exhibiting the insight and penetration of his model. His philosophy of history is of the simplest and crudest nature. As to the "*De Jure Belli ac Pacis*," I am at a loss to recognise the justice of the often quoted eulogy by Sir James Mackintosh that "Grotius produced a work which may now indeed justly seem imperfect, but which is perhaps the most complete that the world has yet owed, at as early a stage in the progress of any science, to the genius and learning of one man." (Miscellaneous Works, 351.) Such a judgment or the description of him as the "Descartes of law" is unfair to his many predecessors upon whose labours he built.

No competent judge will agree with De Quincey's harsh and truculently expressed opinion, according to which Grotius' work on Christian Evidence is "an attorney-like piece of pleading" and his Annals "without historical merit," and that the *De Jure Belli ac Pacis* "has kept its ground chiefly by means of its

early possession of the ear of Europe and also, in a considerable degree, by means of the little scraps of Latin and Greek with which, in contempt of all good composition, it is tessellated; these, being generally short, are of the proper compass for poor scholars; weak birds must try their wings in short flights. Take away the Greek and Latin seasoning, which (in conjunction with the laconic style) has kept the book from putrifying, all the rest is pretty equally divided between empty truisms, on one hand, and time-serving Dutch falsehoods, on the other. Had the book been really the powerful one it has been represented, it would have intercepted the extravagancies of Hobbes, which commenced thirty years later. Well and truly did Grotius, when dying, lament that that he had consumed his life in levities and strenuous inanities." (VIII. p. 112 n., ed. 1890.)

It is amazing that such a judgment should come from one who posed as a scholar and student of philosophy.

Even those who wholly reject De Quincey's words as mere ribaldry must make admissions as to Grotius's limitations. In one respect he is behind some of his contemporaries and predecessors who, sick of the senseless turmoil of their age, were busy with schemes of Utopia. He had not risen to the conception of his contemporary, Emeric Crucé, who, two years before the publication of the "*De Jure*," had promulgated a scheme for a League of Nations, which was to include the Pope, the Sultan, the Emperor, the Kings of France and Spain (*a*). The mediæval conception of a purely Christian *civitas gentium* was breaking down. The Western Kings were not all and always warring against the Ottoman State; they had concluded treaties with it. The age of the Crusades was succeeded by that of the Capitulations. Grotius did not foresee to what his principles led. He did not conceive the possibility or likelihood of Europe being reconstructed. He postulated a society of nations. He recognised a law above them. He did not foresee that there might be an organisation which might enforce that law. War was to be ameliorated, its horrors were to be reduced. But he saw no end to it. He

(*a*) See Prolegomena, 58, where Grotius gives his reasons for keeping aloof from modern controversies: "Vere enim profiteor, sicut mathematici figuras a corporibus semotas considerant, ita me in jure tractando, ab omni singulari facto abduxisse animum."

was not free from pedantry, a fault characteristic of his age. But his uncritical proneness to seek for precedents in remote antiquity, and to substitute strings of quotations for appeals to reason, was not without excuse. A diplomatist and statesman with wide experience in positions in which one had to walk warily, a lawyer conversant with affairs, and a sharer in the chief political controversies and negotiations of his time, he could, we may be sure, often have illustrated, if he had desired, his precepts by apt modern examples. It was more politic to refer to the conduct of the Athenians, B.C. 350, than to that of the Emperor or the French King; to speak of the Roman Republic rather than the Dutch; and to name Philip or Alexander when one was thinking of Richelieu.

He had great personal charm of manner, and fascinated the most illustrious of his contemporaries. There is the well-known letter by Casaubon, in which he tells of meeting Grotius. "I knew him before to be a wonderful man; but the superiority of that divine genius, no one can properly appreciate without seeing his countenance and hearing his conversation. Integrity is stamped on his face. In his talk is exhibited the union of exquisite learning and genuine piety. Nor is it I only who am so taken with our visitor; all the learned and great who have been introduced to him have fallen under the spell, and at the King more than any one"(*b*) (quoted in Pattison's Life of Casaubon, p. 307). The Editors of his theological works speak in rapturous terms of his virtues. "Animo autem erat condito et niveis moribus, in prosperis ejus comitas, in adversis constantia, in omnibus vitae actionibus intemerata fides elucebat. Post divinam suprema illi lex erat salus patriae, de republica bene mereri, amicos colere, inimicos beneficiis sibi devincire illi summa voluptas et studium fuit."

His modesty was as marked as his genius. You may know the story told of him when on his deathbed. The Lutheran minister who attended him read to him the parable of the pharisee and the publican. "I am that publican," said the dying man. But supreme modesty, his many private virtues and accomplishments dazzling his contemporaries, are quickly forgotten and

b) For another view of Grotius' character, see letter quoted in Mr. Knight's interesting, novel and acute paper.

give no answer to the question: What is the secret of the permanence of fame and influence of a book, written more than two hundred years ago in a style which appears to this generation pedantic and diffuse, and with so many marks on its face of the age in which it appeared? The answer which I suggest with diffidence is threefold. First, it is a book inspired by, and inspiring, hope; it separates, perhaps for the first time clearly, politics from law; and it assigns a basis for international law generally accepted for some centuries. Reading it to-day, we see that it was penned by a sanguine spirit confident in the triumph of great principles even in a time of darkness, turmoil and confusion, with a moral glow warming the ponderous masses of erudition with which the author overlaid his thoughts. The preface to the "*De Jure*" expresses the hope that the rules which we now seek for in books shall hereafter be learned from actions of the most perfect pattern, and that, wars everywhere ceasing, peace may be restored not only to all civil States, but to the Churches. (Book III. c. xxv.) It is Grotius's hope that he has laid a foundation on which if any others will build a more stately fabric "I shall be so far from envying him that I shall heartily thank him." His last words are a condemnation of force as in itself "brutish" and a prayer that the maxims which he enunciates may be impressed upon the hearts of those who have the affairs of Christendom left to their management.

As to the second cause of the abiding influence of his work, we only know his superiority and the notable advance which he made when we compare him with his predecessors or contemporaries, for example, with the great scholar and humanist, Justus Lipsius, who in his six books, "Politicorum sive civilis doctrinae," while reprobating Machiavellianism, expounds and approves it in effect and draws a sharp distinction between morality in public and private conduct. (Opera III. 115.) To rulers, statesmen and publicists accustomed to hear only the precepts and praises of statecraft and its mysteries, Grotius's teaching must have been, to some, a painful criticism, to others the revelation of a possible new world. To-day it is not obsolete or unprofitable. The contest between the rule of law and that of force and fraud never ends.

I say little of the basis which he assigned to international

law. It is justly open to criticism as being vague and fluctuating. The Prolegomena to international law are being re-written in terms very different from his introductory chapter. But, if defective, his theory has the merit of being based on tendencies in human nature (*c*).

He was a great humanist in the best sense of that word, one who had a wide outlook on the world, a belief in the ultimate paramountcy of reason; a desire for order and peace as the normal condition; one who was impatient with the anarchy in which he lived. A lover of peace at a time when that seemed a form of folly, a reconciler of warring factions as well as a great humanist, he sought to put an end to the strife between nations and creeds, to link the past and the present; to be a fellow-worker with Erasmus and Leibnitz and other enlightened spirits, who conceived of Europe as a Republic; one endowed with a wider vision than that of the practical politicians of his time. And yet he was of and among them. For most of his life he was a man of affairs as well as a scholar; an ambassador of wide experience, who had filled difficult diplomatic posts, and whose wits had been sharpened by contact with Richelieu, and in whom Oxenstiern, shrewdest of statesmen of his time, reposed confidence.

If I am right in my explanation of his enduring influence, it will not soon end; it may even grow. There are signs of the dawning of an age of a new Humanism—I will not call it culture, with its sinister associations—a period in which the interests of men extending beyond arbitrarily fixed frontiers, and surviving political changes, will be prized as they have not been before; and the domain of law widened.

Now, in the hastening of the coming of this new order, there is room and need for many fellow-workers. The task to be accomplished is immense. The Covenant of the League of Nations is in its final form a mere outline to be filled up in ways yet uncertain. People say, "The League will do this," "the League will act so and so." The League will do nothing, the twenty-six articles may be merely a set of imposing promises, the entire

(*c*) "Mit der Identifizierung des Naturrechts und der philosophischen. Rechtswissenschaft überhaupt, wies er der Rechtsphilosophie die Bahn, in der sie sich viele Jahrbunderte bewegen pollte." (Melamed, Theorie und der Geschichte Friedensidee, 152.)

organisation may remain in a state of dignified torpor, unless there is an educated public opinion demanding that it shall be made a reality. Your Society may help much in the task. I suspect that there may be in some a sense of despair that in the noise of many voices yours may not be heard or heeded. It is a natural feeling. But it may be unfounded. The words of those that know and feel, the utterances of sincerity and intelligence, experience shows, carry far—by a sort of wireless telegraphy they reach and influence remote circles, and your quiet work may be much more persuasive than many clamorous voices. I invite you to believe that you, members of the Grotius Society, are at this time specially called upon to aid in fulfilling the preamble to the League of Nations, *i.e.*, "to promote international co-operation and to secure international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just, and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous regard for all treaty obligations in the dealings of organised peoples with one another." I suggest that you should at once form a Committee to examine the Covenant and the Treaty of Peace in order to see how these objects may be accomplished. And in so doing I believe that you will be honouring the memory of Grotius in the manner which he would have most prized.

It was thereupon resolved that a Committee or Committees, as suggested by the President, be constituted. Sir Graham Bower, Dr. Schuster, Mr. Phillimore and Mr. Weir-Brown consented to serve.

Sir Graham Bower moved that the Society should be represented at the Conference of the International Law Association to be held at Portsmouth in October.

Mr. Wyndham Bewes objected that the delegates selected might not represent the Society. Dr. Bellot stated that he had reason to believe that an invitation to attend would be extended to all the members of the Society.

REPORT OF THE EXECUTIVE COMMITTEE.

During the past year your Executive Committee have held twelve meetings for the transaction of the business of the Society.

Ten new members have been elected, and three have resigned. The Library of the National Liberal Club has been elected a subscribing member.

In addition to these ordinary members, the following, with their consent, were elected honorary members, viz.: Right Hon. Lord Birkenhead (Lord Chancellor), President Wilson, General Smuts and Dr. James Brown Scott.

With sincere regret we announce the loss by death of Lord Courtney of Penrith and Dr. T. G. Shipman.

Twelve meetings of the Society, in addition to the Annual Meeting, have been held, at which papers were read by Lord Parmoor, Mr. G. G. Phillimore, Sir Graham Bower, Mr. J. E. G. de Montmorency, Judge Atherley-Jones, K.C., Dr. W. R. Bisschop, Dr. Evans Darby, Mr. Delatre Falconbridge, Mr. Georges Kaeckenbeeck, Mr. W. S. M. Knight and Mr. E. A. Whittuck.

During the year, up to December 31st, 1918, sixty-two copies of Vol. I., seventy copies of Vol. II. and one hundred and forty-one copies of Vol. III. of "Problems of the War" have been sold, realising the sum of £60 1*s.* 8*d.* With the exception of two or three copies, Vol. I. is now sold out. Of Vol. II. one hundred and ninety-nine, and of Vol. III. two hundred and fifteen, were in stock on 31st December, 1918. In February last, "International Rivers," with maps by Mr. Georges Kaeckenbeeck, was published at a cost of £176. Towards the cost of this work, the President and Fellows of Magdalen College, Oxford, contributed the sum of

£50. In April, Vol. IV. of "Problems of the War" was published at a cost of £203 0*s*. 3*d*.

Subscriptions to the amount of £47 1*s*. 2*d*. have been received during the year.

The Trustees of the Carnegie Endowment for International Peace have signified their appreciation of the work carried on by the Society for the promotion of the study of International Law and its reform by renewing their grant of £250 for the year ending July, 1919.

(Signed) Henry Goudy.

12*th May*, 1919.

THE GROTIUS SOCIETY.

STATEMENT OF RECEIPTS AND PAYMENTS FOR THE YEAR ENDING APRIL 10TH, 1919.

1919.		£	s.	d.
April 10.	To Balance, 10th April, 1918	68	14	2
	,, Subscriptions	47	1	2
	,, E. J. Schuster, Esq. (Loan)	30	0	0
	,, Magdalen College, Oxford	50	0	0
	,, Carnegie Endowment Trustees ..	262	6	7
	,, Sale of Vols. I., II. and III. of the Transactions of the Society	60	1	8
	,, Interest on 5% National War Bonds ..	10	0	0
		£528	3	7

1919.		£	s.	d.
April 10.	By Stationery	11	1	0
	,, Postage	5	9	0
	,, Telephone	1	0	0
	,, Special Messenger	0	2	4
	,, Books and Pamphlets	0	15	3
	,, Typist	0	5	8
	,, Clerk	17	4	0
	,, Rent	25	0	0
	,, Repayment of Loan	30	0	0
	,, Publication of Vol. III.	123	6	10
	,, Publication of "International Rivers"	163	0	0
	,, Income Tax	0	15	0
	,, Cheque Book	0	10	0
	,, Cash at Bank	129	13	3
	,, Cash in Hand	7	1	3
		£528	3	7

We have examined the above figures with the Accounts and Vouchers produced for our inspection, and certify same to be a true statement of the Receipts and Payments of the Grotius Society for the year ending April 10th, 1919.

13*th May*, 1919.

(Signed) HERBERT F. MANISTY.
W. R. BISSCHOP.

GROTIUS IN ENGLAND:

His Opposition there to the Principles of the *Mare Liberum*.

By W. S. M. KNIGHT.

I.—It may, at first sight, appear somewhat of a presumption to ask this Society to devote an evening to the biography of the distinguished man whose name it bears. But I venture to believe that my justification will be accepted as sufficient.

In the first place there is no existent general biography of Grotius which has the slightest claim to regard as a presentation of modern knowledge of his personality and activities. At best there are but a few scattered articles or notices, in most cases restricted in treatment to appreciation and criticism of some well-worn topic of or incidental to his chief writings. The most important of these, and the most valuable, is the learned and judicious study by Jules Basdevant, to be found in Pillet's *Les Fondateurs du Droit International*, published in 1904. This lack of literature is at once a remarkable and deplorable circumstance having regard to the fact that Grotius has now, for nearly three centuries, occupied a position of supreme distinction in the hierarchy of science and letters.

In the second place, as some indication of the general results that may reasonably be anticipated from a careful study of the man and his work, I shall present to you a slight account of his visit to England, a topic which, not only because of its association with the great question of the freedom of the seas, but because of the complete absence of any accurate published information, has at least a claim to the special attention of your Society at this critical moment in the world's history.

I have adverted to the absence of biography. A few words can be usefully spared as to this.

Until about a year since the only formal life of Grotius in the

English language, apart from a rather futile little volume by Charles Butler, which appeared in 1826, was the translation of the French work of Levesque de Burigny, which was published in the year 1764. But copies of this translation, as also of the French editions, have for very many years been so scarce as now to be unobtainable. Students who would seek biographical information about Grotius are therefore almost forced to have recourse to the few articles, often misleading, to which I have already referred. Prior in date to Burigny there are only four biographies worth notice. These are the sketch by Dr. Bates, the famous Nonconformist Divine, published in 1681 as one of his *Vitae Selectorum Virorum;* the *Manes Grotii* of Lehmann, of the year 1727; the *Vita* prefaced to the edition of the *Opera Omnia;* and the standard *Life* by Brandt and Cattenburg, the second and last edition of which was published in 1732. Of these four, the first three are written in Latin, and the fourth in Dutch; and thus the language of the authors, quite apart from the fact that the volumes are equally unprocurable with Burigny, is a formidable obstacle to their general use by English readers.

Burigny, whose work is largely founded on that of Brandt, is now sadly out-of-date. The many years which have passed since his second edition appeared have necessarily disclosed many sources of information and fields of research whence much can be derived that can throw light upon the life and work of Grotius. And so it is no matter for surprise, nor, under the circumstances, for blame of the author, that his work is often inaccurate in most important particulars. It is therefore unreliable, and, except in the hands of the well-informed, a misleading guide. But read cautiously and critically it is nevertheless of considerable value, especially because of its extensive extracts from the letters of Grotius.

Such being the position a new life of Grotius made its appearance the year before last—the work of a Dr. Hamilton Vreeland, Jr., of the New York Bar. But unfortunately there is nothing whatever to be said in favour of this book. Never was a great opportunity so completely missed. It is based almost entirely upon Burigny, with, apparently, some dependence upon Brandt; but it has not even a suggestion of the fulness of the work of the French biographer, while blindly following his inaccuracies, and, what is perhaps worse, most recklessly misquoting and rendering inaccurate much of what

in Burigny is without fault. Moreover, every page bears most striking witness to the author's incompetence, as scholar and literary craftsman, to undertake the task he has assumed.

I recognise that this criticism is exceptionally severe. But it is necessary. The book is pretentious in form and character, and bears, as to part, the imprimatur of Columbia University, and so may, having regard to that dearth of biographical authority to which reference has just been made, easily prove a serious danger and injustice to the student of international law and to the memory of Grotius in particular. But only one of the graver instances of the author's lack of knowledge and care will be referred to in the course of this paper, and that as occasion for my own remarks.

The Grotius with whom this paper deals is the young man of from twenty-one to thirty years of age. I make no reference to his earlier years, and am not concerned with the more distinguished author of the *De Jure Belli*—limitation of space is alone sufficient excuse for this restriction. Nor do I attempt to suggest even in barest outline the nature and extent of his many general activities during the decade 1604—13 I have mentioned. Shortly, it is the Grotius of the *Mare Liberum* and the visit to England that I very inadequately bring to your notice.

II.—In 1604 Hugo Grotius was in his twenty-first year. And already, thanks very largely to his family connections and influence, he was fast establishing himself in the best class of legal practice at the Hague. The great Dutch East India Company was more or less formally amongst his clients. His exact relation to the Company is not certain, and it may be that he was but junior or assistant to one or more lawyers of longer standing and greater experience. The high probability, too, is that he was in the chambers or office, as one seeking experience as well as a clientèle, of an eminent practitioner. That may have been Barneveldt, for, from the moment that Grotius established himself at the Hague, he is to be found in intimate and exclusive relation with the influential circle of which Barneveldt was the centre (*a*). It is certain, however, that he was regarded by

(*a*) Some idea of this circle, and of the relation of Grotius to it, may be gathered from his poems, his earlier published Letters, and the *Epistolae* of Baudius.

the directorate of the East India Company not only as in close association with their legal business, but also as one who, as yet young, must be encouraged and helped, so that in the future he might be equipped and available for work and practice of direct personal responsibility.

Thus it would seem that he was instructed to prepare a case in support of their policy in the waters of the far East, and for this purpose was given access to all relevant documents in the possession both of the Company and of the State. That case took shape in the treatise *De Jure Praedae*, which, however, was withheld for some reason or other from the light of day. In 1864, the MSS. being then accidentally discovered, it was recognised as his, and, in 1868, published (*b*).

The *De Jure Praedae* was written in the winter of 1604-5, its author having just attained his majority and already been appointed to the office of State Historiographer. Some part of this work, however, was published in 1609, under the title of *Mare Liberum*. That was published anonymously, but in Holland its authorship was an open secret in governmental and academic circles, and by 1613 the anonymity was no longer respected.

The *Mare Liberum* is by no means a lengthy work. But its reputation is and always has been remarkable as, in fact, the classic reasoned presentation of the doctrine or principle of the freedom of the seas.

The interest of the book for us, however, on the present occasion, is that it introduces us to the visit of Grotius to England. But this introduction is not merely formal. On the contrary, the matter of the book is so bound up with the more important of the events of that visit, that I am forced to refer to it at some length.

The general thesis of the work, as generally understood, is so well-known that it might seem unnecessary to state it here. And that thesis, as so understood, is so generally accepted, that to discuss it, or, most certainly, to criticise it, might be regarded as an adventure almost audacious. Freitas, who dared to accept its challenge, and that only partially, has now been regarded for centuries as an incompetent or something worse. Only narrowly, in relation to this work, has our own Selden escaped a similar fate. But when I find

(*b*) *De Jure Praedae.* Preface by Hamaker.

a distinguished American historian, Prof. Gaylord Bourne (*c*), going to the extreme of referring to Selden in this connection as "learned" (with inverted commas) I cannot but feel that the laudation of Grotius, so often at the unjustified expense of others, has been and is being carried, in this instance certainly, much too far. So, if only because this unreasonable and unfair laudation has the not unnatural effect of creating in my mind a feeling somewhat aggressive as regards Grotius and his work—a quite irrational feeling I freely admit—I am tempted emphatically to assert that particular ownership or dominion of the sea or parts thereof may be as well founded in morals, law, or reason as the like ownership or dominion of the land. It is fortunately not necessary, however, to enter here into an argument on that issue.

But one must not lose sight of that characteristic instinct of the English people which prompts them so eagerly to accept any sort of doctrine, novel or ancient and sound or unsound, provided only it be imported from abroad. This was remarked many years ago, curiously enough, in relation to Grotius himself. Until I happened upon Clement Barkdale's introduction to his translation of the *De Imperio Summarum Potestatum* of Grotius, published in 1651, I was under the impression that this characteristic was of comparatively modern growth. But no. Barksdale thus recommends Grotius to the English public:—while Grotius has in that work said "some things" for the first time, and some better than they have been said by others, yet—proceeds Barksdale—such "is the English humour," those things which may have been said very well by our own countrymen will perhaps "be taken better from the Pen of a stranger."

In good humour now with Grotius, having said what I have, I return to the *Mare Liberum*. I have said that a few moments must be devoted to it, because of its relation to our main subject. I might also urge that the book is rarely if ever read, still less frequently studied, even by many of those who quote or refer to it most. It is my opinion, too, that most, if not all, of the current abstracts or accounts of its subject-matter and arguments are, if not entirely inaccurate, at least sufficiently partial and inadequate to be most misleading. The *Mare Liberum* was written in Latin, and never, apparently, has there been any real demand for an English version.

(*c*) *Essays in Historical Criticism.*

Certainly there was no such version until only so recently as three years ago when the Carnegie Endowment published a translation at a very modest price. Yet certain of the greatest societies of legal and historical learning in this country have not yet procured a copy for their libraries, and as a result of my enquiries only a few weeks since, I find that no likely bookseller in London has a copy in stock and the publishers themselves are without one in their London warehouse. A few words about the book are therefore amply justified.

In the first place it should be noted that at this time Spain, of which power Portugal was then a constituent, was at war with Holland as also with England. Her prohibition of enemy trading with lands, or navigation in waters, over which she claimed dominion was therefore in perfect accord with principles which, to-day certainly, are generally recognised. But this aspect of the case is entirely ignored by Grotius.

Grotius confines himself, almost entirely, to the discussion of general fundamental principles. The book is, in fact, an exercise in pure dialectic, reminiscent, looking backward, of the philosophical apologetics of the scholastics, and, looking forward, of the philosophy of the anarchist Proudhon—who, by the way, using the same weapon, makes short work of Grotius's justification of private property in land (*d*). So far as regards the seas it is a direct apologetic of the *a priori* dogma, by no means original with Grotius, that those waters "cannot," because of natural necessity, become the subject of particular ownership or dominion (*e*).

(*d*) *Qu'est-ce que la Propriété*, III., § 3.

(*e*) France, in the sixteenth century, furnishes us with some interesting precedents of the Grotian assertion of the principle of Freedom of the Seas; and that, too, against the Portuguese. In the first quarter of the century Francis I. had deliberately adopted a policy of commercial expansion in the East in open disregard of Portugal, and the French began to recognise that power as "the smallest people in the whole globe" exhibiting, nevertheless, an ambition "so great that nothing could satisfy it." As a French author of the year 1535, Pierre Crignon, put it, the Portuguese "believed they could hold in one hand what they could not grasp with two, and it seems, according to them, that God has made the land and seas only for them and that other nations are not worthy of navigating the ocean. There is no doubt that if it had been in their power to close the seas from Cape Finisterre to Ireland, they would have done so long ago. Anyhow, the Portuguese have no more right to prevent French merchants voyaging to the lands that the Portuguese were the first to

But the *Mare Liberum* contains three main arguments, and not one only. The first is that the Portuguese had no title to sovereignty over lands and peoples of the East Indies, nor, except under certain impracticable conditions, can any nation acquire such sovereignty; the second is that they did not, nor can any people, possess the Eastern or any other seas, or any exclusive right of navigation thereon; and the third is that neither they, nor, indeed, any nation at all, have any right to monopolise or substantially fetter the trade of those parts or any overseas trade whatever. Each of these arguments he sustains with equal success and they are all based upon substantially the same general principles. I am afraid, however, that modern history, common sense, and hard fact combine to-day universally and emphatically to ignore his arguments and conclusions, successful though they are as specimens of the reasoning of the schools, in two out of these three cases. One eminent American jurist, however, carried away, it must be, by his great enthusiasm and reverence for the Master, follows and supports him in respect to all three. Nor does he seem to be alone in this.

The first chapter of the *Mare Liberum* is interesting, apart from

reach, and in which they have done no good and where they are neither loved nor obeyed, than we should have had to hinder them sailing to Scotland, Denmark and Norway, assuming that we had been the first to reach those countries." And writings such as this were the expression of a deep and extensive popular feeling in France against the Portuguese pretensions, which emphasized in striking fashion the more measured official protests that France had already made against the Portuguese.

Thus, in 1531, the Admiral of Provence, d'Ornessau, had maintained against Portugal: "Etiam ponitur in facto probabili quod dictus serenissimus rex Portugalliae nullam majorem habet in dictis insulis quam habeat Rex Christianissimus. . . . Imo *enim mare sit commune*, et insula profatiae omnibus ad eas accedentibus apertè permissum, nedum Gallis *sèd omnium aliis nationibus eas frequentare et cum accolis commertium habere*." And these words were afterwards engraven in stone on the tomb of Jean Ango at Dieppe. "In looking at them," writes Margry, "we seem to hear again the proud cry of Crignon against the Portuguese: 'It is most fortunate for that people that King Francis I. was so friendly and courteous towards them, for if he had pleased to have relaxed but a little the rein on the French merchants, then in less than four or five years these merchants would have secured for him the friendship and obedience of the peoples of the newly-discovered lands, and that without using any other weapons than persuasion and good treatment.'" All which seems to show that there was some feeling in France that the French should master the East and not the Portuguese. Margry, *Navigations Françaises*, p. 221.

its argument, as illustrating a certain mode of book manufacture. Whether, or how far, the other chapters are interesting in like fashion I shall not say at present. Let us spare a moment to that chapter.

Grotius loses no time in getting to the foundation or kernel of his case. Boldly, without any sort of hesitation or doubt, he commences his treatise by laying down, in clear and specific terms, the primary general principle upon which he founds his argument—"every nation is free to travel to every other nation, and to trade with it." On this he will stand or fall.

And that principle, he claims, is nothing else than the "most specific and unimpeachable axiom of the Law of Nations, called a primary rule or first principle, the spirit of which is self-evident and immutable." It is, in fact, a "decree of divine justice," "God himself . . . speaking through the voice of Nature . . . that one people should supply the needs of another." And those, he continues, "who deny this law, destroy this most praiseworthy bond of human fellowship, remove the opportunities for doing mutual service, in a word, do violence to Nature herself. For do not the ocean, navigable in every direction, with which God has encompassed all the earth, and the regular and occasional winds which blow now from one quarter and now from another, offer sufficient proof that Nature has given to all peoples a right of access to all other peoples?" Thereupon follow the proofs, or rather—for the "axiom" is "self-evident"—illustrations or confirmation. And of such is the first part of the case of Grotius.

The second part of this chapter is, on the face of it, a work of some learning and research. And as such it has always been received and acclaimed. Though only extending in length to a page or two there are yet twenty-six references specifically noted, from the scriptures, the classical writers and the jurists. But as a fact all this is but merest appearance. Save for an occasional exception, and that of little or no value, the whole, references included, is drawn from one chapter of the *De Jure Belli* of Gentilis (*f*), the only acknowledgment that jurist receiving being a single reference as one of the general company. Moreover, as we shall see, Gentilis is actually misquoted, very seriously, on that occasion. With little other

(*f*) I., c. 19.

authority before him than Gentilis, then, did Grotius compile this chapter.

He certainly introduces some rhetoric as to the services of Nature to man, but this is borrowed, at secondhand, mainly from Seneca. The point in support of which he specifically quotes Seneca is that the wind-blown ocean is such a union of peoples of the earth as in itself to create a right and necessity of commercial intercourse. If, however, Grotius had himself referred to Seneca (*g*), and not relied upon Gentilis, who was quoting him in another connection, he would have found that the quotation, if given in full, was, to say the least of it, scarcely an apt one for his purpose. Seneca proves himself to have but little sympathy with the spirit and objects of those whose cause Grotius is advocating. He inveighs as much against those who, *for gain*, cross the ocean to disturb the peace of others as he does against the military adventurers. And, it would seem that, having regard to commercial as well as military adventure, he was inclined to favour a *mare clausum* rather than a *mare liberum*—a curious fact in view of the partial quotation of him by Grotius—for he says, "it were a great part of human peace, if the seas were closed."

Grotius claims, too, that "the most famous jurists" deny that a State or ruler can debar foreigners from having access to their subjects and trading with them. And he refers to the Institutes and Code, and to Gentilis. But the work of Gentilis, from which he mainly draws his authorities, gives no support to this claim. That great jurist approaches the discussion of the subject only with the greatest caution, and without anything like the bold proclamation of Grotius of the Law of Nations. To Gentilis it is a question of no little difficulty and necessitates the careful examination of many conflicting historical instances. He quotes and deals with a large number of cases where, notwithstanding such a denial, there was no war, and, as against these, only a few where war ensued. Grotius selects his solely from the minority and makes no mention of the instances to the contrary.

The limits of our space prevent, however, a continued examination of this work, chapter by chapter. Enough has been said, how-

(*g*) The reference to Seneca is from *Nat. Quaest.*, V., 18; not III., IV. according to Grotius.

ever, to show what method in exposition and argument Grotius can, when he pleases, adopt. But it is also necessary for our purpose that some indication be now given of the nature of the doctrines for which Grotius contended; and such we propose to give, very summarily.

First, with regard to title to newly-discovered lands. Sovereignty over such can be acquired, where there is no valid agreement with the native authorities, only by taking the most real and positive possession. Mere "seizure with the eyes" is insufficient (*h*). Where-

(*h*) It seems to be doubtful whether Grotius was aware of the practice of the Spanish and Portuguese when taking possession of lands they had discovered. If he was, that practice certainly demanded some specific reference and careful investigation and criticism, particularly when the subject is dealt with by a jurist in a juridical work. A discussion of that practice in relation to his general thesis would have been as interesting as valuable.

Take, for example, the incidents of the occupation of Cibabao, an island of the Philippines believed to be identical with Libagas, near Mindoro.

The "royal fleet of discovery of the Western Islands" anchors off the island, having on board the flagship the governor-general. The "chief notary of the said fleet and government of the said islands" thereupon opens a session and before him appears the governor-general who formally declares that he has sent the "ensign general" on to the island "to make friends with an Indian, a native of the island, called Calayan, who declared himself chief, and had authorised the ensign general to take possession, in the name of his majesty, of the part and place where he went thus with the said Indian, and all other the districts subject and contiguous thereto."

Then the ensign general appears before the notary and makes a declaration as to what actually occurred in pursuance of these instructions—that "being on the river Calayan to which the said chief thus named took him, having landed in a small inlet, at the edge of the water, containing a small bay . . . in the name of his majesty, by virtue of the power conferred on him by the governor-general, he occupied and took possession and apprehended the tenure and true and actual possession or *quasi*-possession of this said land, and of all territory subject to it and contiguous to it. And in token of true possession, he passed from one end of that land to the other, cut branches of trees, plucked grass, threw stones, and performed such other acts and ceremonies as are usual in such cases—all of which took place quietly and peaceably, with common consent of those who were present, without the opposition of anyone." And this declaration was witnessed by two friars, the high constable, two other notables of the expedition "and many other soldiers." *Spanish Papers relative to the Philippine Islands*, II., 169.

Possession was not always obtained, however, with such ease. When, for instance, in June, 1570, the Spaniards were seeking to establish themselves in Luzon, the largest of the Philippines, and which had already been long known and frequented by the Malays, the Javanese, the Chinese and the Japanese, there

fore, if we follow Grotius, the modern theories and practice of spheres of influence, and hinterlands, are entirely without foundation in justice. Nor, in the case of inhabited lands, is mere discovery a good title, for at the time of the discovery the lands could not be *res nullius*, but actually owned by the natives. Arrogation of sovereignty on the pretext of elevating the native civilisation is absolutely unjustified. To quote the very words of Grotius, "it is unjust and unholy" to force nations, against their will, into a higher state of civilisation. Such action is generally the cover of an "unworthy greed for the property of another."

The contention that the Pope, arbitrating between Spain and Portugal, was entitled by his donation to apportion specified parts of the heathen world between those two powers, Grotius dismisses almost summarily. And herein, especially, does he show his indifference to what I might call practical reason as well as historical

was at first some slight opposition. How this was met, and what great regard the adventurers had for form and legal procedure, are apparent from the notarial instrument by which the occupation was evidenced. There, on the spot, the Spanish "master-of-camp" appeared before a notary and made his declaration. "Inasmuch as—a thing well and generally known—his Excellency being on this river of Manila, with the men and ships accompanying him, and having made peace and drawn his blood with two chiefs, styling themselves kings of this said town . . . and without giving them cause or treating them in a manner that would make the said natives change their attitude, the above said chiefs began war treacherously and unexpectedly [apparently the place was fortified by some Eastern power], without advising him beforehand, and wounded and seized certain Indians accompanying us. After that they discharged the artillery in their fort, two balls from which struck the ship *San Miguel*, on board of which was the said master-of-camp. He, in order to guard himself from the injury which the said Moros were doing him in starting the war, and to prevent the artillery from harming his men, attacked the said fort of the Moros, and captured it by force of arms and is now in possession of it. And inasmuch as the said fort and town of Manila have been won in lawful and just war, and since, according to the said natives, Manila is the capital of all the towns of this said island: therefore in his majesty's name, he was occupying and did occupy, was taking and did take, royal ownership and possession, actual and *quasi*, of this said island of Luzon and of all other the ports, towns and territories adjoining and belonging to this said island. Moreover, as a sign of real occupation, he ordered his ensign to raise the flag of his company on the fort built by the natives, had the artillery found in the fort taken for his majesty, and performed other acts and duties as a sign of real occupation." *Ibid.*, III., 105.

fact. He entirely ignores the fact that at the time of the donation the Pope was recognised by all western States that had, or conceived they were likely to have, interests in the Far East as in fact and law entitled to deal with these lands and seas as he actually did, and that the Christian powers other than Portugal and Spain, though they had notice of his intention and the donation when made, did not enter any protest, but appear, on the contrary, to have acquiesced (*i*).

This act of the Pope is entirely comparable to, for instance, the partition of Africa by the Berlin Conference. If, as Grotius alleges, there is an immutable principle which invalidates the Papal donation, so that principle—that a civilised power or powers have no right to dispose of uncivilised lands without the consent of the natives and all civilised powers which, then not consulted, and perhaps not even in

(*i*) In 1481, after the Donation of Calixtus and the subsequent Spanish-Portuguese Treaty of 1479, by which these two nations had divided between themselves the sovereignty of the East and Eastern seas, the King of Portugal sent an embassy to England, to Edward IV. The object of this mission was to confirm the Portuguese "ancient leagues with England," and also to publish and obtain recognition of her title, under the Pope's Bull, to her West African possessions. That this Bull constituted the title here referred to has been "justly inferred" by Robertson, *Hist. of America*, 1828, n. x., p. 531 (Harrisse, *Dipl. Hist. of Amer.*, p. 169). The ambassadors, we read (Garcia de Resende, *Life of King John*, quoted by Bollans, p. 137), were to show and make King Edward "acquainted with the title which the king held in the seignory of Guinea, to the intent that, after the King of England had seen the same, he should give charge throughout his kingdom that no man should arm or set forth ships to Guinea; and also to request him to dissolve a certain fleet which John Tintam and William Fabian, Englishmen, were making, under command of the Duke of Medina Sidonia, to go to Guinea." And the embassy appears to have been a complete success, for "the King of England seemed to be very well pleased, and they were received by him with great honour; and he condescended to all that the ambassadors required of him, at whose hands they received authentic testimonials of their good conduct, together with the necessary confirmations."

All which is corroborated by the Anglo-Portuguese Treaty of 1482 (Rymer's *Foedera*, XII., p. 146), in which, though there is no mention of the matters referred to above, the two countries confirm their old alliance. This was signed by the King of Portugal in February and confirmed by King Edward, at Westminster, in the following September. And, a significant fact, King John is styled in each copy *Rex Portugalliae et Algarbiorum cibra et ultra mare in Africa*.

Immediately after this embassy, Portugal obtained the Donation of Sextus IV. of the year 1481, which was in effect a confirmation of the Treaty of 1479.

being, may subsequently come into existence or acquire ambitions in relation to those lands—must to-day and throughout an indefinite future dominate and invalidate the Berlin partition. If Grotius is to be our criterion, the European powers in Africa, whose settlement there is confirmed by that Conference, are but trespassers and robbers (*k*).

Then with regard to the sea and navigation. Grotius establishes two propositions. The first is, that that which cannot be occupied—in his restricted sense of the term—or which never has been so occupied, cannot be the property of anyone, because all property has arisen from occupation. The second is, that all that which has been so constituted by Nature that although serving some one person it still suffices for the common use of all other persons, is to-day and ought in perpetuity to remain in the same condition as when it was first created by Nature. On these propositions I will make no comment. A dialectician of the type of the young Grotius, however, might find a few moments' satisfaction in examining them (*l*). But your attention must be drawn to a few of his opinions in this connection.

Referring to the alleged Spanish claim to ownership of the Eastern seas, Grotius is ready to admit that they or the Portuguese may have restored by their discoveries a long interrupted or lost route of navigation and have established a few fortified posts on the coasts. But, he proceeds, "sufficient reward for this, for their genius, energy and the losses risks and expenses they have run and incurred, is surely the very ample profits of their consequential overseas trade. The thanks, too, of the world are their due, but provided always that they do not claim that none have a right to follow them where they

(*k*) As a fact, the United States, with its great African population, refused to ratify the Berlin Act. And later, when they ratified the Brussels Act regarding the slave trade, the Senate formally disclaimed any intention to indicate an interest "in the protectorates or possessions claimed by European powers in Central Africa or any approval of the wisdom, expediency, or lawfulness of the policy of Europe in this matter." R. C. Hawkin, *The Belgian Proposal to Neutralise Central Africa during the European War*, Grotius Society Papers, I., 71. Apparently this attitude was founded on the same principles as those for which Grotius contends in the *Mare Liberum*.

(*l*) Having once ventured to mention the name of Proudhon, reference may here again be made to note (*e*), above.

have thus led the way." And again, after arguing against title by prescription or custom, "usually the last plea of injustice," he calls it, he maintains that "rather, instead of attempting to impede free navigation, we are bound to assist it."

And now Grotius concludes his work with a consideration of the right to international trade. "Not even temporal sovereigns in their own dominions have the right to prohibit the freedom of trade." Such is the argument of Grotius. All nations and all individuals, apparently, have an absolute indefeasible right, according to Grotius, to engage in international trade. The right is based upon a primary principle of the Law of Nations; and this right, having "a natural and permanent cause," is one that cannot be destroyed, or at all events may not be destroyed, except by the consent of all nations. There is no question here of national right to limit or condition its overseas trade, for the only right that Grotius asserts and concerns himself with is the absolute right to international trade. And we venture to suggest that it needs but to state this proposition to be conscious of its absurdity. Never, we fancy, has philosopher, professedly practical, so let dialectic run away with his judgment.

And, as we have before mentioned, his conclusions here, as in the case of title to territorial sovereignty, are founded on the same principles, and upon the same arguments derived therefrom, as those upon which he bases his doctrine of the freedom of the seas. If his argument irresistibly leads us to acquiescence in that doctrine so should it force us to agree with his views in the other two cases.

The *Mare Liberum* is concluded by an eloquent application of its principles to the question of the Dutch-Portuguese commercial rivalry in the East, and the attempts of the Portuguese to exclude the Dutch from any participation in the trade there. And it is necessary to our purpose to notice this with some particularity.

"What is more unjust," exclaims Grotius, "than the complaint of the Portuguese that their profits are drained away by the number of their competitors? An uncontrovertible rule of law lays it down that a man who uses his own right is justly presumed to be contriving neither a deceit nor a fraud; in fact, not even to be doing anyone an injury." It is the highest law and equity that everyone may attempt for himself a gain open to all, even at the expense of one who has discovered it. Such an attempt by the Dutch in the East Indies is

but most honourable rivalry, for it tends to lower the price to the consumer. Monopolists of overseas trade are as criminal as monopolist speculators in grain. "Therefore the Portuguese may cry as loud and as long as they shall please: 'You are cutting down our profits!' The Dutch will answer: 'Nay! we are but looking out for our own interests! Are you angry because we share with you in the winds and the seas? Pray, who had promised that you would always have these advantages? You are secure in the possession of that with which we are quite content.' So, if the Portuguese should continue their efforts at monopoly, 'arise, O [Dutch] nation unconquered on the sea, and fight boldly, not only for your own liberty, but for that of the human race."

III.—This was written, as we have said, in the winter of 1604-5. The Dutch were then the most powerful of the rivals of the Portuguese in the waters of the Far East. The activities and strength of the English there were relatively of little or no account, though, in fact, they were increasing most rapidly. In 1609 the book was published. But by that time English enterprise in those waters had so developed that they were now actual contestants with the Dutch for the primacy which the Portuguese had not yet entirely lost.

The facts of this Anglo-Dutch-Portuguese rivalry in the East are so well-known that it is needless to enter here into details. It will be sufficient briefly to summarise the position there as one in which the rivalry was so keen between the three that the conditions of European politics were unable very effectively to prevent the rivals from fighting one another, as though they were all the bitterest enemies of each other and all at war one with the other, whenever the local or temporary exigencies of the adventurers rendered such a course necessary in order to secure the trade of a particular people. To read the history of those early days of the Far Eastern trade is to read a succession of accounts of fights between English and Dutch as well as between them jointly, or one of them, and the Portuguese. And when they were not fighting, bombarding one another's ships, slaughtering each other's crews and seizing a rival's cargo, they were recklessly defaming one another among the natives, the most usual suggestion being that those slandered were nothing but pirates. As a fact, the operations of the earliest adventurers were little else than

piracy, often open and unashamed. And it would be a grave mistake to believe that of these three rivals the Dutch were the least unscrupulous.

It must not be understood, however, from the foregoing that so real and persistent an enmity existed between the Dutch and the English as between these and the Spanish and Portuguese. As a fact, the operations of the Dutch, quite apart from their trade, had developed in these waters, by the year 1605, into a state of open war against these two nations. Thus Matelief, who commanded a Dutch merchant fleet in that year carried with him a commission authorising him "to take, burn or destroy" any Spanish vessels he should meet. But, on the other hand, the peace concluded by James I. with Philip III. a few years later did much to strain the Anglo-Dutch relations in the East. The English were now required to hold their aggressive and predatory hand as against the Spaniards and Portuguese, so resigning to the Dutch a monopoly of aggression which could not fail, having regard to the ideas of neutrality then prevailing, to include in its sweep, wherever expedient, attack of and obstruction to the enterprise of the English.

It was a very real struggle indeed that now took place. The Dutch were determined to overpower the Spaniards and the Portuguese, and, if possible, to wrest from them the dominion of the Eastern seas. And to this end they spared neither money nor men and devoted all the skill and energy at their command. They were building and sending out the largest and best equipped of ships, in fleets of overpowering strength, piloted often by foreign seamen of special experience in the Orient, whom they had seduced and "suborned" without much scruple from the service of their own countries, particularly from the English. And the almost immediate result was that they were in actual command of these seas, the vessels and settlements of the Spaniards and Portuguese being constantly attacked, seized or destroyed. The English meanwhile were prosecuting their adventures in the same waters in the position of a third party suspected and unwanted by each of the others, regarded in actual fact as interlopers, friends and enemies of neither, but, by force of circumstances, the hands of all against them, and theirs, necessarily, against their rivals. On the seas themselves, the English seamen and merchants' agents could not fail to recognise this rise of

Dutch power, to foresee its future possibilities, and vigorously to resist the ever-increasing masterfulness of the Dutch; but at home, though the merchants had some appreciation of the real position, there was no striking governmental apprehension that the freedom of the Indian seas was in near danger of annihilation at the hands of the Dutch.

In 1608 Heemskerke, the near kinsman of Grotius, had definitely established the sea power of the Dutch at the Battle of Gibraltar. Then, the Dutch—to quote an official English report—"stand stiffly to be sovereigns of that part in India which they now possess."

In 1609 France enters upon the scene. She decides to promote a company, on the lines of the English and Dutch East India Companies, with a view to obtaining for herself some share of the Eastern trade. But Holland objects. She cannot tolerate another rival. Her ambassador "complains of the enterprise for many respects," is the report to Lord Salisbury, the English Secretary of State, from the English Minister at Paris (*m*). And a month afterwards, in January, 1610, there is another report. The Dutch, it seems, do not like the French taking a leaf from their book and engaging Dutch seamen for their projected enterprise. And so they "complain very strongly" about the proposed French Company. If the French persist, threatens the Dutch ambassador, in "suborning" Dutch mariners to assist them, "the Hollanders will be driven to do justice on their own people in their own territories, and board the French ships wherever they meet them, and hang up all the Flemings they find in them." And in the opinion of the English ambassador this protest "will probably put an end to the idea, as the French cannot go on with it without the help of Hollander men and shipping" (*n*). And, as a fact, this project of France was not proceeded with.

The *Mare Liberum* had now been written about four years, on the instructions, we are always told, of the Dutch company that was at the back of this arbitrary and monopolist action of the Government of the Hague. It was to be published to the world, too, during this year, and its author was now established, in increased influence, in association with the Company, the directors and merchants of the

(*m*) Becher to Salisbury, Dec. 1609, C.S.P., Col. Ser., East Indies (1515—1616), No. 469.

(*n*) Becher to Salisbury, Jan. 1610, *ib.*, No. 478.

Company and the Government itself. But nowhere can we find any trace of criticism of this action on his part. Nor, indeed, in any of his works, including even his *Annals and History*, where often such doubtful actions are alluded to at length and with much appreciation, are there any of such criticisms or protests in relation to them which one might reasonably expect from the moral philosopher of the *Mare Liberum*, to say nothing of the author of the *De Jure Belli*.

The Anglo-Dutch rivalry was increasing in intensity. We read of such complaints as that of a captain of the seventh voyage of the English Company who arrived at Pellacala, that there "the Hollanders did bear a hard hand against us." It seems that the Dutch had procured from the local king a regulation by which "it had been forbidden to all other European nations [to trade there without the consent of (?)] the Dutch." And so there were "hard words between them" (*o*). This incident is only typical of the general observance by the Dutch, by the clients of Grotius, of the primary and immutable law of nations, that trade must be free between all peoples.

As a fact the Dutch, by the year 1611, had adopted a policy of rigorous monopoly of the East Indies trade, their armed vessels swept the seas, and, wherever possible, they had established fortified posts on the coast. The English, if they did not observe the Dutch prohibitions against trading which were everywhere confronting them, were very summarily dealt with. If they would not quietly leave an island or port they were forcibly ejected, their cargoes were seized and their crews often imprisoned, the natives were intimidated against trading with them, and, inevitably, fighting became the order of the day. But at length the merchants of London began to press the Government to take some action.

At the close of 1611 they presented a petition to Lord Salisbury. Its opening is pregnant with meaning and interest. "Having long endured notorious injuries from the Hollanders in their trade to the East Indies the petitioners are enforced at last to break silence and complain of their griefs." Particulars of these "griefs" follow. The Hollanders, they proceed, "have forcibly appropriated divers

(*o*) **Becher to Salisbury, Jan. 1610, C.S.P., Col. Ser., East Indies (1515—1616), No. 578.**

of the chief places of traffic which of right belong to the English, and seek wholly to debar them from trade there." And so on, with detailed account of the aggressions of the Dutch. From the Moluccas, especially, it is alleged, the Dutch, having obtained a footing there by "some craft," "have wrongfully and forcibly prevented the English trading in the Island, excluding them therefrom entirely." And the English merchants conclude with the suggestion that "to colour all these doings the Hollanders slanderously report that the petitioners have assisted the common enemy, the Spaniards; and . . . thus the petitioners having the Spaniards and Hollanders enemies in the Indies must of necessity be enforced to give over their trade there, which is the chief end the Hollanders aim at." They beg, therefore, that the English Government will negotiate with Holland so that "they may enjoy freedom of trade" (*p*).

A striking commentary is this upon the principles of the *Mare Liberum*. It is the English who are here pleading for freedom of trade, for freedom of the seas, and as against the Dutch too, and particularly the Dutch India Company. And with this Company, as also with the ruling oligarchy of the State, Grotius was and had been for some years most intimately associated, being not only one of the Company's legal advisers and kin of its most influential directors, but now, indeed since 1605, Advocate-Fiscal of Holland, and soon to resign that office to become Pensionary of Rotterdam. The English, had they known the author of the *Mare Liberum*, might therefore have every reason to anticipate a sympathetic consideration of their grievances. We shall see.

The petition is at once forwarded by Salisbury to Winwood, the English Minister at the Hague, and it is pointed out that the action of the Dutch is a clear contravention of "that general Law of Nations which admitteth a communion and liberty of commerce" (*q*). No reference is made to the *Mare Liberum*, quite naturally, for apart from the question whether the book was actually known to or had influenced the minds and actions of the English merchants and Government, Lord Salisbury was here relying upon a principle of international law then—but useful, perhaps, as pure theory only—

(*p*) State Papers, East Indies, I., No. 34 (Holland Correspondence).
(*q*) Winwood's *Memorials*, III., 320.

well-known and generally accepted, and, if not actually stated in any English work which has since acquired international fame because of such statement, certainly having an origin and vogue quite independent of Grotius.

Winwood presented the petition to the States-General without loss of time. Barneveldt took the leading part in discussing it with him. His attitude was one of apparent eagerness to meet the complaints, but, behind that eagerness, Winwood was conscious of a fixed determination actually to do nothing in the direction desired. It was very doubtful, he reported to Salisbury (*r*), that the action they did propose would "affect the surety of the trade so much desired by the English merchants." The Dutch Company, he pointed out, were "a body by themselves, powerful and mighty, and will not acknowledge the authority of the States-General more than shall be for their private profit."

Two months were now to pass ere the States-General made formal reply to the petition, and in the deliberations of the Dutch Company, as also of the States-General, we may be quite certain that Grotius had some share. But whether this be so or not the reply of the Dutch was in flagrant opposition to the principles of the *Mare Liberum*. It was signed by the greffier Aerssens, then friend and associate of Grotius, and claimed (*s*), quite frankly, a monopoly of the trade of the East Indies, though, if necessary to that end, the Dutch would admit the English into co-operation with them.

The method of the reply was characteristic. It did not deny the allegations of the British. It did, though, allege a mass of complaint of a like character against the British. As Winwood reported to Salisbury: "The greffier Aerssens brought him a whole volume of recriminations alleged by the administrators of the Company at Amsterdam and Middleburg, as against the grievances of the English East India merchants." Obviously they were deliberately avoiding the direct reply to the British proposals that for the moment there should be a cessation of their attacks on the English. This, as he states himself, was Winwood's view, and he immediately informed Aerssens that the English merchants "did not demand reparation for wrongs formerly suffered, but assurance that hereafter they might

(*r*) C.S.P., C.S., E.I. (1515—1616), No. 601.
(*s*) *Ib.*, Nos. 605, 606.

peaceably trade without the Hollanders' interruption, who by force of arms beseige the places of chiefest traffic." It was no answer, he insisted, for the Dutch to suggest that it would be to the advantage of the English "to join with the Hollanders in their trade in those parts, and both nations to make one Company, 'which is here taken to be the surest course both to live together in good amity, and to be master over the Portugals in those islands'" (*t*).

We are now in March, 1612. So far as I can discover there is nothing more on record that is relevant to our topic until we come to the departure of Grotius for England, towards the end of the March following, as a Dutch agent to negotiate a settlement of these differences. But I say this because, though much of what may be discovered about Grotius in his relation to England during this year is of great interest generally, and especially to theologians and ecclesiastical historians, it is yet of little importance to the lawyer. A word, however, must be said, though adequate treatment of the matter would require another paper as lengthy as this.

IV.—From December, 1611, until August, 1612, Grotius was carrying on a correspondence with Casaubon, who was then living in London, and his letters were actually being read by King James and discussed by that monarch with Casaubon. These letters of Grotius were written with a view to their being seen by the King, and the replies of Casaubon were often written in terms suggested by James. Of this correspondence only those from Casaubon have been published, but the original letters of Grotius are still in existence (*u*).

The whole of this correspondence may be summed up as a strenuous endeavour on the part of Grotius to bring about a general conference of the orthodox Reformed Churches with a view to their union. And I gather from it that, at this time, the mind of Grotius was chiefly, almost exclusively, occupied with this question. I believe that at this time his interest in the rights and obligations of nations as subject for philosophical investigation was but of the slightest. And this view is neither inconsistent with his activities during this period nor with his very erratic temperament and distinguished versatility.

(*t*) *Ib.*

(*u*) *Burney Coll.* (Brit. Mus.).

Two facts, at least, do emerge from this correspondence which are strictly relevant to this paper. The first is that when Grotius did come to England he was already well-known to the King. The second is that his main interests and activities in England were devoted to theological and ecclesiastical affairs, and not to commercial or juridical, and, as to persons, were almost exclusively centred in Casaubon and the very few English friends, including the King, of that most amiable but troubled soul.

And this latter fact suggests an explanation of, though no excuse for, the remarkable judgment of Grotius with reference to England as a land without light and learning. "In England," he wrote to his friend Meursius, shortly after his return to Holland, there is only "a mean commerce in letters. Theologians reign and pettifoggers conduct affairs. Casaubon is almost alone in enjoying a sufficiently favourable position, and that is quite an uncertain one; he would have had no place at all in England as a scholar if he had not assumed the role of theologian . . . Barclay, too, stands uncertain between riches and poverty" (*x*). And this is a description of literary and learned England at the close of the Elizabethan Age—Shakespeare not yet dead, his plays a chief item in the national festivities hardly concluded at the moment of the arrival of Grotius in London; Bacon in fullest activity. I have called it a judgment. Rather, it would seem to be the ill-considered opinion of a man careless and indifferent in observation, impressed only by the obvious and immediate, quick and reckless in generalisation. If it is not that, then it is the judgment of one whose interests, associations and opportunities in England were most limited. We must not be tempted, however, at present, into any further detail of the theological or ecclesiastical interest of the visit of Grotius to England.

But I have said enough, it must be, to suggest that if there could be doubt or ignorance as to any particular period in the life of Grotius it could not be in relation to that visit. Yet it is a remarkable fact, if one relies upon his biographers, that there is nothing in his life more doubtful or more unknown. And because of that I wish to place on record, once for all, so that no future biographer may have the least excuse for error, first the year of his visit and, second, the actual business upon which he was officially engaged.

(*x*) Grotius, *Epist.*

The latest biographer, Dr. Vreeland, gives the year as 1615. In this he seems to follow Burigny, whose account of the affair is very involved. But it is most regrettable, for his essay is in general entitled to the greatest respect, that Basdevant is equally in error. On the other hand, in a very few instances and generally in slight sketches, as in the *Encyclopædia Britannica* and Maasdorp's preface to Grotius' *Introduction to Dutch Jurisprudence*, the year is given correctly, but without further detail of any importance. As we shall see, the correct date is 1613.

Then as to his business. Burigny, Basdevant and Vreeland in succession, over a period of more than a hundred and fifty years, are unanimous in making it a negotiation between Dutch and English agents for the settlement of the Greenland Fishery dispute. And they are all in error. That dispute, which is set out by them with much particularity, was not dealt with until the year 1615, and then in Holland and not in England. This is the most usual error and is constantly appearing. Another account of the object of his mission is that he was sent with secret instructions from the Arminians to induce King James to favour their cause. This is given by Chalmers (1814), Butler (1826) and the Abbé Hely (1875), amongst others. And no doubt this was a part, and secret part, of his mission.

But the true, official object of the Mission was to negotiate a settlement of the differences which had arisen, as already detailed, between the Dutch and the English with reference to the trade of the East Indies (*y*). It was the business of the author of the *Mare Liberum* to oppose the English demand for free trade and a free sea in those lands and waters.

Nor has there been any valid reason for the uncertainty and inaccuracy as to this which are so noticeable in biographers. Authors nearer the age of Grotius, if not explicit, certainly suggest the true facts. Le Vassor, for instance, in his *Histoire du règne de Louis XIII.*, published in 1700, states that "Grotius was sent to England about this time [1613] on business of the East India Company. But one can readily believe that this commission had another and a second object. The States of Holland were only too eager that so clever a man should make an effort entirely to disabuse the

(*y*) In S. R. Gardiner's *History of England*, II., 313, the cause and date of the visit of Grotius to England are accurately stated.

mind of the King of Great Britain, and that he should discuss the question of the five articles of the Arminians with the most learned of the English bishops and theologians" (*z*).

V.—Grotius was apparently an additional or extra member of the Mission (*a*). The Dutch Company originally appointed three of their directors, namely, Reiner Pauw, James Boreel and Diederic Meerman (*b*). Of these Pauw, through the Heemskerkes, was a kinsman of Grotius (*c*), and Meerman was one of his closest friends. All of them were burgomasters or aldermen of important Dutch cities, and leading members of the ruling oligarchy, Meerman being at one time burgomaster of Delft, thus occupying a position identical with that of the father of Grotius (*d*). Meerman, too, has some claim to fame as the most important of the founders of the Delft pottery industry, and his arms and those of the gild and the municipality were alone carved on the original façade of the gildhall of the potters at Delft (*e*). Of Pauw I know nothing of general interest. Boreel, however, is a personage of special interest to Englishmen. He was not only civic and State and commercial dignitary, but also Colonel in the Dutch Army, and later, in 1618, was sent to England as a fully accredited ambassador. He was knighted by King James in 1623, when already, in 1619, his son William, who was also a

(*z*) If the States-General itself can be believed, the Arminians "sent over into England, by Hugo Grotius, a certain writing, in which the true state of the controversy was dissembled, a copy of a letter being also annexed; and they requested that he would petition from the most serene James, King of Great Britain, seeing this cause could not be settled by any other method than by a toleration, that his most serene royal majesty would deign to give letters according to the form of the annexed copy, to the States-General; which he (Grotius), having seized on an opportunity, surreptitiously obtained, and transmitted them to the States-General." *The Articles of the Synod of Dort with a History of the Preceding Events*, published by the States-General. [Translation into English from the Latin by Scott. Miller's (American) edition, p. 140.]

(*a*) Winwood to the King, *Holland Correspondence*.

(*b*) *Ib*.

(*c*) Genealogical Table, in *Manes Grotii*.

(*d*) Van der Aa, *Biog. Woordenbock der Nederlanden*.

(*e*) He was Dean of the Gild of Potters, "a considerable man, knight, former burgomaster, and, in some measure, the Maecenas of the confraternity." H. Havard, *Hist. de la Faience de Delft*, p. 66.

diplomatist, had received the same honour. Later, the son William was created a baronet by Charles I., and, it is said, was raised to the English peerage by Charles II. during the period of that monarch's wanderings on the continent. But it is a very remarkable fact that nothing more was generally known in this country of the Boreel family until, in 1875, Burke found for it a place in his baronetage, and there to-day it may be found, the pedigree showing a line distinguished in Dutch history, often allied, too, by marriage, with equally distinguished Britons (*f*).

Grotius was added to the Mission by the States-General itself (*g*). And no doubt he was so chosen because of his legal and civic position —for he had just been advanced to the office of Pensionary of Rotterdam—and by reason of his reputation as author of the *Mare Liberum*. As a fact, the name of Grotius is the only one that has survived as an actor in the negotiations that took place in England. The other three appear to have dropped entirely into the background, probably content with the hospitality and society of Sir Thomas Smythe, the governor of the English Company, and other distinguished London citizens and merchants, while their young and more brilliant colleague, taking full advantage of his acquaintance with Casaubon, was making what impression he could in the learned and more distinguished circles of the King and some prelates.

Whatever might necessitate contact and negotiation with the great ones of the earth, especially with crowned heads, was peculiarly attractive to Grotius (*h*). Whatever else may be uncertain and erratic

(*f*) G.E.C., *Complete Baronetage*, II., p. 231.

(*g*) Winwood to the King, *Holland Correspondence*.

(*h*) It may be urged that herein, and in relation to what follows, Grotius was no different from his contemporaries, or indeed from most distinguished moderns. Probably that is so. But the need for what is here written is to be found in the habit of so many who tell the life of Grotius to look with scorn upon, and even dub as adventurers, those who, being rivals of Grotius to some extent, had the same nature and ambitions as Grotius himself, and adopted similar methods to shape their careers, whilst, at the same time, Grotius is presented as one who was entirely singular and superior in this respect, moving through life always uncontaminated by personal touch and association with its more material, or—shall I say?—sordid and vulgar elements. Thus Cerisanté, because he is able somewhat to supplant Grotius in his French mission, is summarily and contemptuously, and quite unfairly, dismissed as "adventurer" by Dr. Vreeland (p. 227). As a fact, Grotius was a very practical man of affairs,

about his character and ambitions, at least there can be no doubt he was ever throughout his life, from earliest youth to his last days, a most devoted worshipper at the shrine of aristocracy and royalty (*i*). That is, in my view, a characteristic of his that did very much to suggest his application to the exposition of international law. He wished to move officially in international circles and, if not himself a ruler of State, to be the agent and associate of rulers and engaged in their public business. The *De Jure Belli* was written largely with a regard for its possibilities as an introduction to diplomatic service. And at that period this service in every nation was open to any man, no matter his country or station in life, who had the skill, the influence and the energy to obtain an appointment. Grotius, with the encouragement and aid of his father and general family connections, had been making careful, well-designed progress towards the realisation of this ambition from his fifteenth year at least (*k*).

as keen for his own advantage and advancement as any politician or man of business either of his own day or ours. That Cerisanté was a Scot, a Duncan, notwithstanding the name by which he is known to history, is, in this connection, pregnant with meaning and interest!

(*i*) It is only necessary to refer to his many adulatory poems to royalty and to his dedications. Nor must it be assumed that the poems that have been published are all that he wrote and forwarded to their subjects. In the Burney MSS. (368 (3), 368 (6), Brit. Mus.) there are two to King James, one on the occasion of his thirtieth birthday, when Grotius was only thirteen years of age, and the other, four years later, in celebration of that monarch's escape from the Ruthven dagger. Nor must it be assumed that such poems were written merely for the love of writing them. On the contrary they were always written, for such were the methods of publicity of the day, with a view to the recipient being induced to notice and favour the poet in some practical fashion. And as an instance of the value attached by the poets to such efforts reference may be made to Baudius, close friend of Grotius, who, though in a most impecunious condition at the time, did not hesitate to incur the great expense of a journey to England in order solely that he might present his poems to the King in person and thereby secure a reward that would make profitable his trip. To his intense dissatisfaction, and a little to the amusement of Grotius and his circle, his journey was fruitless. (Baudius, *Epist.* Cent. II., Nos. 35, 36, 37.)

(*k*) His inclusion in the train of Barneveldt's mission to Henry IV. in 1599; the exaggerated account of his reception by that King; the association of that account with the general circumstances and mode of the publication of the *Martianus Capella;* the exploitation of the meeting in France with the youthful Prince of Bourbon; the constant chorus of adulation by Scaliger and others of

And so we can readily conceive his satisfaction now that at last he had the opportunity to approach the person of a king as official representative of his Government.

Before the Mission left Holland the Dutch Company had approached Winwood with a view to securing his support for their case. Their success, however, was very slight. He certainly wrote to Sir Thos. Smythe, but to say no more than that he had pledged himself that the Dutch should "receive all reason" in the "whole course of their negotiation." He also advises the King of the departure of the Mission. And to James he describes its personnel, passing lightly over the three burghers, but lingering impressively at the name of the young Dutch publicist. "One Monsieur Grotius is required to accompany them," he writes, "who lately was Advocate-fiscall of Holland, and now is chosen Pensionary of Rotterdam, in place of Mons^r Barneveldt's brother, lately deceased." He also begs the King to receive the Mission well and do what he can to further its object (*l*). And the States-General sent an official letter to James to the like effect, this being supported by a personal letter from the Stadtholder, Prince Maurice (*l*).

Grotius and his colleagues, thus heralded and introduced with all official circumstance, arrived in England somewhere about the end of March, 1613, immediately after the conclusion of the festivities connected with the marriage of the Princess Elizabeth to the Prince Palatine, and about two months were to pass before they reached home again, their business concluded. Commissioners were immediately appointed in England on the side of the British Company to meet and treat with the Dutch agents, but there is no record of any personal meeting of the two delegations. The whole of the negotiations were carried on by exchange of documents, the first, the memorial of the Dutch, which was in fact their answer to the English petition of the year 1611, being dated the 23rd March, the last, being the final reply of the King, bearing date the 24th May. All of these documents were written in Latin save the last, which was in French.

the young son of the Curator of the University, and his introduction by them to foreign notabilities—and so on, right down to, and even including, his inclusion in the mission to England.

(*l*) *Holland. Correspondence.*

VI.—Unfortunately there is no contemporary official account of the negotiations extant, for the Court Minutes of the English East India Company of this period have disappeared. So, for one matter, it is not known or, rather, I cannot discover, who were the English commissioners who had the signal and remarkable distinction of urging the principles of the *Mare Liberum* against, of all persons, its author himself. Most, however, of the documents or copies of them are still in existence, more or less complete (*m*). Then, too, there are the contemporary records of the Venetian ambassador to his Government (*n*). And these have considerable value in this connection, for while in London on this occasion Grotius appears, consistently with the then policy of the Dutch and probably acting upon instructions, to have treated that ambassador, Foscarini, somewhat as a confidant in relation to the subject-matter and progress of the negotiation.

The memorial of the Dutch is a document of more than three pages. But its purport can be very briefly summarised. It is, in short, a substantive complaint, on the lines already characterised by Winwood, that having regard to the fact that they the Dutch had been engaged in the trade of the East Indies for so many years, had sunk much money in it, and incurred much danger in fighting against the Portuguese, "it was hard upon them" that the English should now seek some share of that trade. "Therefore," it proceeds, "considering the great charge we were at in maintaining our trade there, we tell the King that it is very hard that his subjects should trade in those parts, seeking a harvest at our expense, they escaping the cost."

This, then, was the position that Grotius was now taking up as envoy and advocate of the Dutch Company. But he was now dealing with hard particular circumstance. What a commentary, however, upon his dialectic of the *Mare Liberum!* Its rhetoric, indeed its very words, now foundation for contention diametrically opposed to his thesis of that work. And from the mouth of Grotius himself!

And what is the English reply to him who was to become famous as "the father of modern international law"? On the 18th April

(*m*) There are two copies in the *Holland Correspondence*, East Indies, Vol. I., No. 38.

(*n*) *Cal. State Papers, Venetian, Vol. XII.*

they file their answer. They contend, very shortly, that they had a right by the law of nations to trade in those parts and, with all other nations, to travel there and freely engage in commerce—they contend for the principles of the freedom of the seas and of trade, and for the illegality of monopoly. Moreover, they add, not only were the English known in those parts before the Dutch, but they had even concluded treaties of commerce with the natives. Could we assume that they knew of the work we might readily believe from this that the English were deliberately quoting *verbatim* the *Mare Liberum* against its author. But this cannot be assumed. There is no reference whatever to the book in the records of the negotiation, nor on any occasion during this visit to London is there any allusion to Grotius as its author. I am inclined myself to the view that in 1613 the reputation of the *Mare Liberum* in England was very limited (*o*).

To return, however, to the negotiation itself. Grotius is not nonplussed by the arguments of the English. Two days after their reply the Dutch rejoinder is delivered, approved, it must have been, if not actually drawn up, by Grotius himself. But now there is a remarkable change of dialectic.

As to the prior discovery alleged by the English and the local treaties they claim to have made before the appearance of the Dutch, these points are controverted as matters of fact. But with regard to general principles the Dutch have no hesitation in refusing to accede to the English claim that universal freedom of trade is the permanent creation of the law of nations—permanent and immutable according to the *Mare Liberum*. "No," declares Grotius now, "it must be recognised that many of the laws of nature and nations are indefinite," that is to say, their content and application must depend upon particular human opinions and social conditions. And thus, he reminds the English, all nations arbitrarily define their own boundaries and, as a fact, restrict and regulate as they will the trade they permit in their territories and with their peoples, excluding what persons they like. In fact, he continues, it is of the essence of natural liberty to be able to bind or limit the action of others. More-

(*o*) This must not be read too literally. I cannot but be impressed by the fact that Sir Julius Caesar knew the book and made extracts therefrom, for his own use, which are yet extant in the *Lansdowne MSS.* (142 (67), Brit. Mus.).

over, with regard to the monopolies which the Dutch had agreed with several of the peoples of the East, these being founded on contract must be observed by others. Such contracts have the sanction both of natural equity and the law of nations, and are as sacred as public treaties themselves.

So did Grotius, when in London, conveniently forget his rhetoric of the *Mare Liberum* wherein he stigmatises monopolists as criminals. He forgets, too, his old contempt of the Portuguese reference to the perils and expense by which alone they had acquired their trade. Now, in London, he raises the same argument against the English and specifically pleads the perils and expense the Dutch had run and incurred. And not for one moment is he to be satisfied, as according to his book he should have been, with the "thanks of the world."

After this rejoinder of the Dutch the discussion resolves itself into argument as to priority of appearance in the waters of the East, the King finally replying that settlement must be arranged later on.

And now let us return for a moment to the biographers of Grotius. Basdevant, more or less following Burigny, thus summarises the visit of Grotius to England: "Because of his scientific renown, Grotius was included in a Dutch commission which, in 1615 [*sic*], went to England to discuss with English commissioners some questions of which the *Mare Liberum* already contained a study . . . the Greenland Fishery dispute [*sic*] . . . the States-General charged Grotius, who had already written upon the matter [*sic*] and who was more *au fait* than anyone else with the subject, to go to England to demand reparation. He did not succeed in obtaining satisfaction." And Dr. Vreeland, also alluding, in terms, to the Greenland Fishery dispute, but unconsciously referring to the dispute to which we have been directing our attention and about which his book is silent, has the following sapient comment (*p*): "But the old proverb that the strongest are the masters of the sea and such never desire to make restitution held in this case too, and the conference, from the viewpoint of the Dutch, was very unsatisfactory." Apparently, according to Dr. Vreeland, the right of Holland, gallantly championed by Grotius, was ruthlessly crushed by the unconscionable might of

(*p*) Taken from Burigny.

England. On this occasion it is a nation, not an individual: at whose expense Grotius is most improperly lauded.

VII.—And it is remarkable that it was during his visit to England that Grotius received for the first time that certificate of character which has ever since dominated all approach to examination and criticism of his work (*q*). We immediately recognise the origin of the conventional Grotius of history in the account of him which Casaubon wrote to Heinsius. It is in a letter of 13th April, 1613 (*r*). "I cannot express my great pleasure," wrote the famous scholar, "in the conversation of so great a man as Grotius. Oh, that wonderful man! I knew him before, but to fully comprehend his excellency and his divine genius one must see and hear him. His countenance speaks honesty and his speech reveals the profoundest learning and the most sincere piety. Do not think I am his only admirer, for all learned and good men think the same as I, particularly the King."

Thus Casaubon—a man undoubtedly at that time somewhat weak-minded when in contact with any dominating personality. "A nervous, excitable, over-sensitive man," is a summary of the estimate of one of the most competent of those who have studied his life, "exaggerated in his appreciation of services rendered and in his respect for others, with an easily-gulled vanity." And we would add, judging from a study of his *Ephemerides* of this period, a simple soul, obsessed by a religious enthusiasm of most primitive personal type. Yet obviously, having regard to the conventional estimate of history as to the personality of Grotius, he was in this case an accurate observer of actual fact. Indeed, it is impossible to believe that the countenance, speech and genius of Grotius were other than as described by Casaubon. It required all that for an author to advocate a cause so opposed in its principles to those of his own quite serious published work.

(*q*) What follows in this section was not intended by the author to be read as part of this paper, but was read at the Society's request on account of its general interest. It can only be regarded as a part of a topic too extensive to be treated in such a paper as this. Moreover, properly to present it there is need to go into the matter of the ecclesiastical activities of Grotius in England, which, as already stated, are outside the scope of the paper and the interests of the Society.

(*r*) Casaubon, *Epist.* 965.

So a fair opportunity now offers to re-present another view of the personality of Grotius, and this time—*pace* Barksdale—that of an Englishman, Archbishop Abbot, statesman, ecclesiastic, man of affairs, a personality quite opposite to that of Casaubon, resembling more that of Grotius himself. It is to be found *in extenso* in a letter of the Archbishop published in Winwood's *Memorials* (*s*), but so far, save for rare and slightest extract, quite lost in those somewhat scarce and bulky volumes. It was written apparently as general warning by Abbot to Winwood on the occasion of this visit of Grotius to England, though in particular relation to certain ecclesiastical activities with which this paper has only secondary concern. Because Casaubon's testimonial is always being reprinted and quoted, but Abbot's letter never, we venture to give some rather lengthy extracts from the Archbishop.

. . . . "But concerning the other Parts of your letter, I have thus much more to advertise you. You must take heed how you trust *Doctor Grotius* too far, for I perceive him *so addicted to some Particularities in those Parts, that he feareth not to lash, so it may serve a turn.* At his first coming to the King, by reason of his good *Latine* Tongue, he was *so tedious* and full of *tittle tattle,* that the King's judgment was of him, *that he was some Pedant, full of Words and of no great Judgment.* And I myself discovering that to be his Habit, as if he did imagine every Man was bound to hear him so long as he would talk (which is a great Burthen to Men replete with Busyness), did privately give him notice thereof, that he should plainly and directly deliver his mind, or else he would make the King weary of him. This did not so take place, but that afterwards he fell to it again, as was specially observed one night at Supper at the Lord Bishop of *Ely's,* whither being brought by Monsieur *Casaubon* (as I think) my Lord entreated him to stay to supper, which he did. There was present Doctor *Steward* and another *Civillian;* with whom he flings out some Question of that Profession, and was so full of Words, that Dr. *Steward* afterwards told my Lord, that he did perceive by him that *like a smatterer he had studyed some two or three Questions, whereof when he*

(*s*) Vol. III.

came in Company he must be talking to vindicate his skill; but if he were put from those, he would shew himself but a simple Fellow. There was present also Dr. *Richardson* the King's Professor of Divinity in *Cambridge*, and another Doctor in that Faculty, with whom he falleth in also about some of those Questions which are now controverted among the ministers in *Holland*. And being Matters wherein he was studied, he uttered all his Skill concerning them; my Lord of Ely sitting still at the supper all the while, and wondering what a Man he had there, who never being in the Place or Company before, *could overwhelme them so with talk for so long a time.* I write this unto you so largely, that you may know *the Disposition of the Man,* and how kindly he used my Lord of *Ely* for his good Entertainment. For when he took his Leave of the King, he fell into Discourse what a famous Church was here in England; what worthy men the Bishops were, how he admired the ecclesiasticall Government; what great Contentment he received by Conference with many Learned Men: But, saith he, *I do perceive that your great men do not all agree in those Questions now controverted amongst us; for in talking with my Lord of Ely, I perceive that he is of opinion that a Man is truly justifyed and sanctifyed,* may *excidere à gratia,* although not *finaliter* yet *totaliter.* The King's Majesty knowing that my Lord of *Ely had heretofore inclined to that Opinion, but being told the King's Judgment of it had made Shew to desist from broaching any such thing,* (for then it was as well *finaliter* as *totaliter,*) *did secretly complaine to me that my Lord should revive any such thing, and especially make it known unto a stranger.* Whereupon I moved my Lord in it, and told him what the Doctor had said, and to whom; but thereunto he replied with *earnest Asseveration,* that he had not used any such Speech unto him, and was much abused by that Report; and thereupon offered by Letters sent into *Holland* to challenge *Grotius* for it, as having done him a singular wrong to report so of him to the King. I replyed, that I held it better to let it alone; not to draw Contention on himself with so *busy a man.* I wd satisfy the King and so might his Lordship also; but he would do well to be wary how he had to do with any of those Parts ill-affected; for he had been once

before so served by *Bertius* the Author of the Book *De Apostasia Sanctorum;* who upon speech with Mr. Bedwell at Leyden vauntingly gave it out, *that his Lordship and the Bishop of Lincoln were of his Opinion.* You will ask me what is this to you? I must tell you therefore that you shall not be without your part. At the same time Sir *Noel Caron* was togr with *Grotius,* being now to take his leave of the King, *it was desired by his Majesty that he would not harshly give his judgment concerning Points of Religion now in Difference in Holland, for that his Majesty had Information but of one side, and saying nothing at all for the other.* For he might have let his Majesty know, *how factious a Generation these Contradictors are;* how they are like to *our Puritans in England;* how refractory they are to the Authority of the Civill Magistrate, and other things of like Nature, as I wrote you in my former Letter. I doubt not but that *Grotius* had his part in this Information, whereout I conceive you will make some use, keeping these things privately to your self, as becometh a man of your Imployment. When his Majestie told me this, I gave such an Answer as was fit, and now upon the Receipt of your Letters, shall upon the first Occasion give further Satisfaction. . . ."

These two views of the personality of Grotius may well serve as introduction to the conclusion of this paper.

VIII.—Apart from his office as professional advocate of Holland in the battle of documents already described, Grotius was also engaged in sounding and influencing opinion in the circles of the Court and Government (*t*). He had a clear and definite policy, namely, to thrust Spain and Portugal entirely out of the Indies and their seas and trade. The Dutch were a little doubtful as to their present ability to accomplish this without the aid of England, but were

(*t*) What follows in this section is a short résumé gathered from the despatches of the Venetian ambassador in London to his Government, and which are to be found in C.S.P., Venetian, XII., pp. 520, 522, 534, 538, 548. They have not hitherto been noticed in relation to the life of Grotius. Our résumé is short and inadequate because of the limitations of the paper and its subject.

confident that, if England should refuse to join them in their efforts, they could soon so increase their strength in the East as to be independent of England. Then they could turn their attention to the English, and, having disposed of them, make very short work of the pretensions of a powerless France. In this way did the author of the *Mare Liberum*, in quite natural development of what his kinsman Heemskerke had accomplished at the battle of Gibraltar, seek as diplomat to create a monopoly of trade and navigation in the East and its seas, entirely Dutch, if possible, but, if necessary, in co-operation with England.

Primarily and chiefly the work of Grotius was, apparently, as representing the Dutch Company, to fight the representatives of English commerce in the legal battle which we have just described. Not only was the Dutch ambassador, Caron, dealing with the general diplomatic struggle which was taking place in London at the same time, but he was being assisted by Prince Henry of Nassau. Nevertheless, Grotius, in addition to his share in the battle of documents, had a part in this struggle of diplomacy, and that part, to judge from the despatches of Foscarini, was equally personal and responsible with the functions of Caron and Prince Henry.

The first diplomatic step that was taken was to enlarge upon the great and expensive preparations that the Dutch were making with a view to immediate action in the East of a far more extensive and powerful character than any that hitherto had been attempted. "Though the outlay would be great and the returns small, yet the Spanish would soon be expelled and the profits then would grow," was the tale of Prince Henry. Then, following this, two days after his arrival in England, Grotius has an interview with the King—that to which the Archbishop refers in his letter. But now, through Foscarini, we hear nothing of theological discussion, only of the politics of commerce involving the questions of the freedom of trade and the freedom of the seas. "Why should not the Dutch and English co-operate," urges Grotius, "in order to expel the Spaniards and Portuguese? Why should the English pay duties and other contributions to Spain in order to be allowed to trade in the Eastern ports?" But at Court, to the King, Grotius, while putting these specific points, was careful to refrain from any assertion of Dutch

legal rights in the East as against the English. The King, we learn, "listened readily," and "seemed to agree"; and then the English commissioners to whom we have already referred were appointed. Now, however, we are following Grotius in another relation.

Apparently, Grotius, because of the attentive and appreciative listener he had found in the King, who, if Abbot is to be relied upon, must have most effectively concealed from Grotius his "judgment" of him, believed that he was already on the high road to success in his diplomatic mission. So he soon became more explicit in his proposals. Without troubling about nice academic questions as to just causes of war and so forth, he offered the English merchants a contribution of four millions in gold if only they would engineer a raid upon the Philippines and contrive to wrest them from the possession of Spain. If that could be accomplished the Dutch, in their turn, would help the English to thrust the Spaniards out of the West Indies. And if excuse for all this were needed, if indeed there must be some appearance of regard for international right, then it can be alleged that Spain had broken faith with Holland in relation to the truce then existing.

But the English would not rise to the occasion. One circumstance alone was sufficient to deter them. Their money and their ships were so little and few in comparison with the resources of the Dutch. Partnership of any sort with the Dutch could only mean complete absorption by their energetic and better equipped rivals.

And now, his persuasions and inducements having failed to move the English, his project not likely to be achieved, Grotius suddenly takes up a most remarkable position, one which even amazed his confidant, Foscarini. He protests that he had been misunderstood. Nothing was further from the minds and wishes of himself and his colleagues than hostilities against Spain. And further, he expresses sorrow at news he now receives from Holland. A movement, he learns, had lately come into being for the creation of an armed force entirely Dutch, and national, of all the provinces united with Holland. The Dutch should no longer be dependent upon foreign military assistance. Then alone they would attack Spain in the East on behalf of the interests of the Dutch Company.

Apparently, if Grotius had any real personal conviction at all in

the matter, his aim was to unite the province of Holland with England as against Spain in the East rather than allow all the Dutch provinces to unite in an independent national endeavour towards the same end. And such an aim was not inconsistent with the known policy of Barneveldt, Grotius and their circle that Holland should enjoy the hegemony of the Dutch Netherlands, even at the cost of an almost enslaved United Provinces and central national Government.

But by this time the paper negotiations had reached their practical end. Grotius, however, had accomplished nothing there. Matters must therefore be brought to a climax. Once more, falling back upon his old position, he makes a bold bid for war against Spain. As final persuasion he asserts that the Spaniards had decided to expel the English from the East and also from the West Indies, and urges that it is now a question of England fighting for her own vital interests. And in support of this he tells a very circumstantial tale —how the Dutch had intercepted a Spanish vessel on which were found the "original orders from the King of Spain" (*u*).

IX. (*x*).—Ultimate failure, however, was the only reward of Grotius. The most that could be said by him or his friends as to results of his efforts was that the English were "in some perplexity" and the affair was in the King's hands. "If the matter rests with his Majesty," was the enigmatic comment of Grotius, "it will soon be settled."

He had failed to move the English from adherence to the principles of the *Mare Liberum*, which he himself, for the occasion at least, had not hesitated to abandon, or by casuistry to destroy. He had failed, also, in particular, to establish an Anglo-Dutch political combination against Spain. And may it not be that this failure accounts for his

(*u*) The paper, as read, here closed.

(*x*) As originally conceived and prepared the paper now enters upon a rather long account of the ecclesiastical interests and activities of Grotius in London. All this was omitted because of its length and its irrelevance to the subject proposed to be placed before the Society. Completed, sect. VII. would here have its place as introduction to the further matter which, apart from its ecclesiastical and theological interest, is of the highest general importance in the biography of Grotius. This further matter would itself occupy almost as much space as the paper, as it now stands.

partial and misleading, and apparently ignorant, estimate of the English and their literary achievement and rank?

(*Read before the* Grotius Society *on January 28th*, 1919.)

Professor Goudy said Mr. Knight had given much new information, but his paper could scarcely be said to be *laudatio Grotii*. Grotius was acting as an advocate of the Dutch Company and this would account for his inconsistency. His view, as expressed in the *Mare Liberum*, was novel at the time. In theology, like Erasmus, he sought the *via media*. Abbot's reputation could not be said to stand very high. Casaubon said Grotius was the greatest man he had ever met.

Mr. Whittuck pointed out the difference between the freedom of commerce, which meant the use of Dutch harbours, &c., and the freedom of the seas.

Sir Graham Bower insisted that it was unfair to take Grotius out of the historic setting of his age. The Spaniards and Portuguese were justified from their point of view in relying on the validity of the Papal grant, which the English regarded as destroyed. Englishmen and Dutch differed in mentality. The English had asserted their sovereignty of the sea.

Mr. Cole said Grotius had to meet his own arguments. The documents might be read in the light that the Dutch desired a compromise.

In reply, Mr. Knight said that he could not place Grotius on the same plane as Erasmus. Nowhere did Grotius show any real sympathy. He was an emissary of the Arminians, who in England were represented by the Bishop of Ely. What appealed to Grotius was the ritual and the order of the English Church.

A COURT OF INTERNATIONAL JUSTICE.

By E. A. WHITTUCK, B.C.L.

THIS is the first Meeting of the Grotius Society since the Covenant of the League of Nations was entered into.

Even a cursory view of this document is enough to show that if it can be made effective it will make a change in international relations, such as before the war was not possible. We must rejoice that the Allied Powers at the Conference have been able to co-operate with one another in a scheme which will in important respects limit their own actions for the general good. At the same time we must recognise that the terms of the Covenant are not free from defects. Some of them, and especially those which deal with the subject of arbitration, need amending, and others, filling up and interpreting. Old ideas contained in them have to be systematised, and new ones, such as that of mandatory States, to be discussed. In this task, especially on its juridical side, a learned Society such as this ought to be of great service. Hitherto we have perhaps been rather backward in considering the problems which a League of Nations involves. Now that we have the plan of the League actually before us we may hope to have frequent opportunity of doing so.

My Paper to-day concerns one of these subjects—the proposal to set up a Court of International Justice. The Paper was proposed before the Covenant was announced, though that this would make provision for a standing international court was fully to be expected. The tendency of international opinion had long been in favour of creating such a court; at both the Hague Peace Conferences attempts were made to do this, which at the last were almost successful. Hence in most of the schemes which have been suggested for constituting the League of Nations a regular court of international justice has a place.

The recognition of the need for this has arisen from the fact that increasing experience of arbitration courts chosen by the parties to try particular cases—the usual form of arbitration—has shown their

insufficiency. Valuable as their service has been in the past and as it must continue to be in the future in settling international disputes, it is felt that the time has come for the institution of a regularly constituted court of the League of Nations with a permanent body of judges attached to it holding continuous sittings like a municipal court of justice. Such a court is particularly required to determine cases in which doubtful questions of international law are involved. Arbitration courts chosen *ad hoc* have not the authority and are not well suited in character for fulfilling this function. Their members are too closely connected with the State which selects them, especially if they are its subjects; they have no judicial traditions or habit of acting together, like members of a standing tribunal; and though in important arbitration cases international lawyers of the highest eminence generally sit as arbitrators, diplomatists and others who have no special legal knowledge may also be included.

It is therefore not surprising that arbitration awards, generally speaking, show a disposition to avoid detailed discussion of the legal bearing of the case and a preference for compromise. Some of these awards are undoubtedly of permanent legal value; but international law cannot be said to have been developed to any great extent by means of arbitration. A standing international court of permanent judges holding continuous sittings is evidently required for the purpose.

The importance of creating such a court as an organ of the League of Nations is that by no other means does it appear possible to bring international law out of its present confused state.

There are, of course, those who do not wish to see the Law of Nations reduced to positive rule. They regard it as a loose system of moral and merely customary principles, the application of which should be left chiefly to diplomacy. But to this view I believe the Grotius Society is fundamentally opposed. In treating the subject you are in the habit of applying to it the same general legal method which you apply to the relations of those who are subject to a common State sovereignty, though, as the Law of Nations is only based on the common agreement of States, its authority is of a different kind. Thus you would, I think, wish to see the decisions of an international court of justice having something like the same influence in shaping it as State courts have exercised on the common

law. No one knows better than an English lawyer how great this influence may be. An international court is not indeed likely to bind itself so strictly to precedent as an English court does; nevertheless, it is certain to develop in course of time a jurisprudence of its own. Its judges, who will represent the highest ability of their respective States, will by habitual intercourse learn to understand one another and to communicate in what to most of them will be a foreign tongue. They will thus provide a means, such as does not at present exist, for giving international law a more positive character.

What powers should be entrusted to such a court is a problem to be considered. Is it to be a court which is to be only competent if States voluntarily submit their disputes to it, or is it to have, like a State court, the power of entertaining suits at the instance of one party who would be in the position of plaintiff? In the first case it would only differ from an arbitration court chosen by the parties either from the Permanent Court of Arbitration at the Hague or independently, on account of its being a standing tribunal instead of one constituted for the occasion. In the latter it would have jurisdiction similar, as far as it went, to that of a court like the Supreme Court of the United States.

In considering this subject it must be remembered that States have only resolved to constitute an international court at all after much hesitation and delay. Thus the attempt on the part of the United States to get this done at the first Hague Peace Conference, as you know, failed. Mr. Holls, one of the American delegates on the occasion, remarked: "No proposition before the Conference was received with more sympathy and favour than the plan for the establishment of a Permanent Court of Arbitration. It formed the keystone of the proposals formulated and presented on behalf of the United States; and almost from the moment of their arrival at the Hague the American representatives declared that the realisation of this idea was their chief object at the Conference." Notwithstanding, however, their enthusiasm on the subject, which Mr. Holls thus describes, it cannot be said that he and his associates succeeded in their object, which was to get an international court of justice constituted on lines analogous in their way to those of the Supreme Court of the United States; for all that was done at the Conference in this connection was to create, at the instance of Lord Pauncefote, the chief British

delegate, what was called the Permanent Court of Arbitration, but what, in fact, is an international organisation at the Hague to provide States with efficient machinery for arbitration if they wish to make use of it for the purpose. In some recent arbitration treaties States have bound themselves to have resort to it.

At the second Hague Peace Conference, however, Great Britain and other States that were members of it showed their willingness to concur with the United States in creating a standing international court under the name of the Court of Arbitral Justice. But only a Draft Convention could be made on the subject as the minor Powers at the Conference would not become parties unless they were allowed equal representation with the greater in the formation of the court. Hence the Convention has remained only in draft, though before the war the United States Government was trying to set the court on foot by limiting the agreement to certain States.

There was another Convention at the second Hague Peace Conference actually agreed to, which seemed to show that the feeling of distrust among States of a common court of justice was passing away. This was the Convention for creating an International Prize Court. It obliged the States that were parties to it to allow appeals to the international court from their own Prize Courts without any further consent on their part. But the alarm was subsequently raised and was not allayed by the Declaration of London; hence the Convention has not been ratified.

These Conventions having failed and no subsequent ones having been substituted, it was left to the Conference of the Allied Powers at Paris to deal with the subject in the Covenant of the League of Nations. The way they have done this is to be seen in the 14th Article of the Covenant, which runs as follows: "The Council shall formulate and submit to members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or the Assembly." Thus the Covenant leaves it to the Council of the League of Nations to draw up a plan for the constitution of the proposed court, so that until this has been presented to and accepted by the members of the League,

the court cannot come into existence. You observe that in making its plan the Council has free discretion except on the subject of the competence of the court. The court, it declares, is only to be competent to deal with disputes of an international character which the parties submit to it. Accordingly, all proceedings taken before it will have to be founded on a special agreement between the particular parties. Surely to restrict the functions of the Court of International Justice by not giving it at once the power of an ordinary court is greatly to impair its usefulness. Moreover, it hardly seems worth while to set up the elaborate judicial machinery that would be required for constituting such a Court if it is not to have compulsory jurisdiction of a general kind. For to constitute an international tribunal which would give satisfaction would involve a permanent staff of most distinguished judges, resident at the Hague or other place where the seat of the court should be fixed, incapable of holding any other preferment, holding office of the League of Nations and paid a fixed salary by it. Would there be sufficient work to occupy the time of such a body if its functions were curtailed as the Covenant requires? It is to be noticed in this connection that the Covenant does not even contain, as might have been expected, a clause making arbitration generally obligatory in justiciable cases. The various arbitration treaties between particular States will no doubt continue in force notwithstanding the formation of the League; but it would have been of great help to the cause of arbitration and to the object of obtaining a judicial decision on controverted questions of international law if the opportunity had been taken to make a uniform rule on the subject of making arbitration or judicial settlement obligatory. The Conference may have shrunk from the task of distinguishing between political disputes which are not suited to judicial treatment and those to which the term "justiciable" is often applied. Justiciable, it is to be noticed, is a term which has not been clearly defined, and until it is so should be avoided in drawing up the constitution of a league of peace. It would certainly include many cases which are not covered by any recognised rule of international law. The proper course to have adopted, it is submitted, would have been to have made all except political disputes arbitrable, and to have left it to the Standing Court to determine, subject to an appeal to the Council, which of them was within its competence.

To have given such power to the Court would have done much to strengthen its hands and to render it more useful.

The terms of the Covenant, however, show that the League is averse from setting up more than a court to which States may resort by mutual agreement. Its disinclination to give the court compulsory powers probably arises from the same feeling of distrust as prevented the International Prize Court from coming into existence. International law is in too indeterminate a state, it may be thought, to admit of States giving a court such full power of interpretation as it might under other circumstances usefully exercise. Perhaps, however, the danger of doing so is not so great as it appears at first sight. With members of the high character of men like Asser, Renault, Sir Edward Fry and Mr. Choate, who have unfortunately gone from us, but have left worthy successors, the court would be one that could be trusted. Its law-making powers would be great but they would be exercised in a judicial and not in a legislative way, the distinction between which was well described by Mr. Davies at the Third National Conference of the American Society for the Judicial Settlement of International Disputes. Mr. Davies said: "This judicial construction does not and must not consist of a wilful imposition of new rules dictated by political considerations, for nothing would be more fatal to judicial authority than such action; but true judicial construction is the discovery of a rule already existing by implication in the general body of the law, although not before specifically formulated. The reason of the law remains the same; its form is gradually modified, supplemented and enlarged through the effort to adapt the rules of law to the complexity of social relations. The law naturally develops step by step as new needs arise. Such is creative judicial construction. This function is something very different from that of legislative enactment." Moreover, it is to be remembered that the decisions of the International Court of Justice would probably be made subject to some revising process, and disputes of political importance would not be within its purview. In course of time, and it is to be hoped before long, the number of open questions would diminish as the field of international law came to be more and more covered by its own decisions, by conventions, and ultimately by a code.

But though for these reasons we may be of opinion that the objec-

tions to putting the proposed court on the same footing as an ordinary court of justice are unfounded, and that it cannot fulfil its purpose completely unless this is done, it may not be possible in the present state of international opinion to go further than to allow one State to sue another in the court if the dispute can be brought under a particular category.

It is to be gathered from arbitration treaties, from declarations at the Hague Conferences, and from schemes of the League which have been proposed in America and elsewhere, that questions of a legal nature and especially such as relate to the interpretation of treaties are most suitable for arbitration. But these are just the kinds of cases which do not admit of compromise and so are unsuited for submission to a tribunal selected by special agreement between the parties. There should, it is submitted, be a court to which States should have a right to appeal to obtain a decision thereon. If, however, in the present unsettled condition of international law the States of the League are unwilling to give the proposed court such extensive powers as this would involve, they at least might not object to agree to abide by its decision in all cases which depend on the interpretation of treaties. This would greatly limit the law-making power of the court and at the same time entrust to it a very useful function, since an authoritative interpretation of treaties on not a few important subjects is very much required. Further, it ought not to insist on a compromise between the disputants to enable either of them to have its treaty rights thus defined. The suggestion has sometimes been made—partly with a view to giving work to the court—that it should be open to hear cases of appeal from the decisions of State courts on questions of international private law and in cases in which a person makes claims against a foreign Government. Certainly the court would be available for such extraneous work, if required.

There are various difficult questions of detail worth considering which the Council of the League will have to determine in drawing up the constitution of the court, such as the mode of appointing its judges (which, under the constitution of the League, will be easier to settle than it was previously), their tenure of office, the place which is to be the seat of the court, the question whether the court should be entitled to send Commissions for adjudicating on cases in distant countries, and others. But my object to-day has been to bring to

your notice some general considerations which make the establishment of an international court of justice of the highest importance. The existence of such a court would undoubtedly do much to induce States to fight out their quarrels in courts of law instead of on the battlefield.

(*Read before the* GROTIUS SOCIETY *on February 25th*, 1919.)

The Chairman expressed the indebtedness of the Society to Mr. Whittuck for his careful and exhaustive examination of the subject. This would have proved more instructive if Mr. Whittuck had given his own conclusions as to the manner in which awards should be enforced. From his own experience in the courts he thought Mr. Whittuck had underrated the future of arbitration. He wished Mr. Whittuck had faced the real obstacles to a permanent court of arbitration. The list of good jurists or "Europeans" would not be very large. Men of larger training in jurisprudence were required. The constitution of the United States was one bar. Some of the objections to a permanent court were unfounded. A court of appeal was desirable.

Mr. de Montmorency contended for the recognition of full sovereign rights. Nations would not submit to interference in questions which went to the root of their existence.

Mr. Dowdall objected that the word "justiciable" was very ambiguous.

Mr. Henriques urged the creation of a tribunal which would make law. Infringement of sovereignty must necessarily follow the creation of an international tribunal.

Mr. Whittuck replied that he did not doubt that arbitration courts constituted *ad hoc* would still be found useful after an international court has come into existence; nor did he think that sovereignty would be infringed by the existence of such a court, as, according to the Covenant, each member had the right of withdrawing from the League after giving due notice.

TREATMENT OF PRISONERS OF WAR.

By GEO. G. PHILLIMORE, B.C.L., and HUGH H. L. BELLOT, D.C.L.

One of the chapters of the Laws of War which the experience of the late War has shown to be in urgent need of revision is the status of prisoners of war, for which the existing international regulations of the Hague Convention on the Laws of War on Land have admittedly proved inadequate and have had to be supplemented by special agreements between the combatant States. No more fitting time for their reconsideration could surely be found than the present, when the impression of their shortcomings is fresh in the mind; and the position of men who from combatants have become non-combatants, and have to stand outside the military and civil activities of the international struggle, deserves sympathetic consideration from the practical no less than from the humanitarian point of view.

The first point to consider is the principle itself of taking prisoners and sparing the lives of antagonists. At this time of day it is not necessary to trace its development from an act of grace to the right of the helpless (German War Book) (*a*): it is enough to go back to the prohibition of the Hague Convention against killing or wounding enemies who have surrendered at discretion, having thrown down their arms, or possessing no longer the means of defending themselves, and also against the declaration that no quarter will be given. But it is not easy to decide the point of time when fighting should be deemed to stop and the right to surrender or yield to a captor to begin which entitles the prisoner's life to be spared. This must always remain a military question and depend on the moral quality of the military leaders and their subordinates, and it is not difficult to imagine cases in which one must qualify the absoluteness of the

(*a*) "War captivity is not an act of grace, it is now a right of the defenceless."

propositions above cited. For example, it is not reasonable to expect men who are attacking a fortified position held by the enemy, and who suffer inevitably far heavier casualties than the defenders, to refrain from avenging their losses which increase with their approach to the enemy sheltered under cover, merely because these latter cease to resist when they are on terms of equality with the assailant. In former days persistence in what was deemed to be hopeless resistance was held to justify the refusal of quarter; and on the attack of fortified places Wellington on several occasions declared the strict rule to be that, after the walls were breached, if the defenders being summoned to surrender refused to do so, their lives were forfeited on the place being taken by storm. Another reason for refusing it is in case of treachery, where the enemy by pretending to surrender causes his opponents to relax their onslaught and takes advantage of it to renew the fight. Yet another reason for the same refusal is where it is necessary in an advance to secure the attacking forces against the possibility of wounded enemies being able to inflict losses in the rear of an advancing line who have gone past them. In this connection it may be noted that even so late as 1898 the instructions for the government of the armies of the United States (which were a re-issue of those issued in 1863 as General Order No. 100 in the American Civil War) permitted a commander to direct his troops to give no quarter in great straits when his own position made it impossible for him to cumber himself with prisoners, though it must now be regarded as obsolete (Stockton, Int. Law (1914), 324). The same Code includes among prisoners of war men falling into the hands of the captor either fighting or wounded on the field, or in hospital, by individual surrender or capitulation, all disabled men or officers in the field or elsewhere, if captured, and all enemies who have thrown away their arms and ask for quarter (*ibid.* 318).

The present juridical position of prisoners under the Hague Convention above cited is that they are in the power of the hostile Government, but not in that of the individual or corps who have captured them (Art. 5). This is, of course, a great development from the old idea that prisoners taken in war were at the disposal of the captors or the commander of the enemy forces, just as all property found on the battlefield other than warlike materials was in practice left as booty to the individual soldiers. Besides members of the combatant forces, persons who follow an army without directly

belonging to it, such as newspaper correspondents and reporters and sutlers' contractors, who fall into the enemy's hands and whom he thinks fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army which they are accompanying (Art. 13). But military and naval attachés of neutral countries with the forces, not being of enemy character, cannot be prisoners of war, but may be detained by the captor if their immediate release would lead to disclosure of his plans or convey to the enemy information as to his strength, position or movements (Davis, 211, cited by Stockton, 322).

The proper treatment of prisoners of war in captivity, if not prescribed expressly in the Hague Convention, is implied in the provisions that the Government into whose hands they fall is bound to maintain them, and if not specially agreed between the belligerents, they are to have the same food, clothes and quarters as the captor's troops (Art. 7). They must be humanely treated. All their personal belongings, except arms, horses and military papers, remain their property (Art. 4). If questioned they are bound to declare their true name and rank, or are liable to be curtailed of the privileges accorded to their class (Art. 9). They may be interned at a town, fortress, camp or any other locality, and are bound not to go beyond certain fixed limits, but they can only be confined as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist (Art. 5). As regards their employment, the captor State may utilise their labour, except in the case of officers, according to their ranks and capacities; their tasks shall not be excessive and shall have nothing to do with the operations of the war. They may be authorised to work for the public service, for private persons or on their own account. Work done for the State is to be paid for according to the tariff in force for soldiers of the national army employed on similar tasks, or if none such are in force, then at rates proportional to the work executed; work done for other branches of the public service or for private persons is arranged in agreement with the military authorities. Their earnings go to improve their position, and the balance is paid them at their release, after deducting the cost of their maintenance (Art. 6). Officers are entitled to full pay in proper cases, which must be repaid by their Government (Art. 17; Smith, 229). Naval officers are not expressly included, but at the Hague in 1907 it was formally submitted that these Land War Regulations should apply to naval

warfare as far as possible (*ibid.*). In connection with their employment, the view is held that prisoners may not be employed in constructing fortifications distant from the scene of hostilities (Smith, *ibid.*); but services of a neutral character, such as in military hospitals and ambulances, may be imposed on them, and outdoor work of a civilian kind.

As regards conduct, prisoners are subject to the laws, regulations and orders in force in the army of the State into whose hands they have fallen. For any act of insubordination, such measures of severity as may be necessary may be taken. Escaped prisoners, recaptured before they have succeeded in rejoining their army or before quitting the territory occupied by the army which captured them, are liable to disciplinary measures; but prisoners who succeed in escaping and are again taken prisoners are not liable to any punishment for their previous flight (Art. 8). It is pointed out by writers that it is not a crime to escape, it is a duty to do so if a favourable opportunity presents itself, as it is equally the duty of the captor to prevent it, and he can resort to any measures not punitive in character that will best secure that end. Upon recapture confinement may be made more rigorous than before (Davis, 315, cited by Stockton, 320).

As regards parole, prisoners may be set at liberty on parole if the laws of their country authorise it, and they are bound in such case on their honour to fulfil scrupulously, both as regards their own Government and the captor Government, the engagement they have contracted. In such cases their Government is bound not to require nor to accept from them any service incompatible with the parole given (Art. 10). A prisoner cannot be forced to accept his liberty on parole, nor is the enemy Government obliged to assent to his request to that effect (Art. 11). Any prisoner liberated on parole, and recaptured bearing arms against the Government to which he had pledged his honour or against the allies of that Government, forfeits his right to be treated as a prisoner of war and may be brought before the Courts (Art. 12). Stockton is of opinion that by the usages of International Law the court-martial may award sentence of death. Paroles are ordinarily taken only from officers, or, when necessary, from officers for the enlisted men of their commands, and only exceptionally from enlisted men: as regards his own Government, a paroled officer is considered as debarred from active service in the field against an enemy, but can perform adminis-

trative or other services beyond the area of active operations. Parole ends with exchange or the end of the war; exchange of prisoners is regulated by agreement between the belligerent Governments (Davis, 321).

The Hague Convention also prescribes the setting up of a bureau of information to answer inquiries about prisoners, and collect and forward effects of personal use, valuables and letters, etc. (Art. 14; see account of the work of the British Bureau, by E. T. Roxburgh (1915)). The Convention also provides for facilitating the work of relief societies, for the admission, free of duty, of gifts and relief in kind, for the free exercise of the prisoners' religion and their right to make wills (Arts. 15—19; see Smith, 230). After the conclusion of peace their repatriation is to take place as soon as possible (Art. 20).

The British and German agreements, made in 1917 and 1918, as the result of Conferences presided over by representatives of the Government of Holland, afford useful precedents for the future treatment of prisoners of war.

The former opens with a declaration by the Dutch Government that they were willing to receive up to 16,000 German and British combatant or civilian prisoners at the charge of the two belligerent Governments. It provides—I. that the repatriation under the existing agreements shall be resumed (1): II. as regards repatriation or internment in neutral countries of sick and wounded combatants, that tuberculous prisoners interned in Switzerland who are practically cured shall be repatriated after examination (2): a more lenient schedule of disabilities was agreed on for choosing combatant prisoners for repatriation direct or from a neutral country and for internment in a neutral country (3): prisoners who had been eighteen months in captivity and were suffering from "barbed wire disease" were declared suitable for internment in Switzerland or some other neutral country, and if after three months their health is not considerably improved, the disease shall be treated as serious and the prisoner entitled to be considered for repatriation (4): for prisoners in captivity before November 1, 1916, there was provided a complementary internment in Switzerland according to the new schedules, after examination by two commissions composed of three Swiss doctors and three doctors of the captor State (5): to make way for them, prisoners already interned in Switzerland who needed a long time for recovery were to be repatriated (according to the agreement for

reciprocal exchange of the severely wounded and seriously ill), the decision to lie with the Swiss doctors unless the number of such cases designated for one side exceeds those on the other by 20 per cent., and then according to a provision (8) cancelled by the 1918 agreement (Arts. 15 and 24), 6, 7 and 9 being abolished similarly; repatriated prisoners are not to be employed on any front of military operations or on lines of communication or in occupied territory (10).

Under the third head, officers and non-commissioned officers in captivity for more than eighteen months are to be interned in a neutral country (Switzerland or other), unless they desire to remain, the order of transfer being that of priority of capture, irrespective of nationality, and only German officers and N.C.O.'s in Great Britain and France (extended to German officers in British overseas dominions and protectorates and occupied territories (Art. 7 of 1918 agreement)) being entitled (11).

Under the fourth head a certain number of German civilians interned in England and of English civilians interned in Germany, chosen by medical officers according to the new schedule of disabilities under the second head, and any deficiency in number under that schedule is to be made up by adding cases chosen by the captor State's medical officers as next most in need of relief medically (12).

Under the fifth head the accommodation available for combatant and civilian prisoners interned in Holland is allotted, with the provision that any of the interned prisoners escaping shall be promptly returned by their Governments (13): the sixth provides for the repatriation of the medical personnel on either side (14 and 15): the seventh fixes the punishment for all attempts at escape (now superseded by Art. 48 of 1918; see *post*); and immediate release of combatants then undergoing longer sentences, and reprisals on British combatants in German hands are cancelled (16 and 17): the eighth remits all punishments inflicted on combatants and civilians for offences since capture and the ensuing 4th August till conclusion of peace (18 and 19): the ninth provides that reprisals against combatant and civilian prisoners shall not be carried out till after four weeks' notice, and in suitable cases, before threatening reprisals, the elimination of their causes is to be attempted (20) (*b*): while the

(*b*) The International Red Cross protested to the belligerents against the practice of reprisals against prisoners of war, and the British reply is given in P. P. Misc., No. 29 (1916), which admits that the policy operates indiscriminately and unjustly.

remaining paragraphs provide for speedy delivery of parcels and early notification of capture (21 and 22).

The second agreement is on similar lines. In the first place, as regards repatriation and internment in neutral countries of combatants and civilians, existing agreements are extended, and all warrant officers and non-commissioned officers (including naval officers of this rank), and men who have been prisoners more than eighteen months shall be repatriated head for head and rank for rank (except under Art. 8) (Art. 1): combatants interned in Holland and Switzerland under existing agreements are to be repatriated without regard to the surplus, and also all other members of the forces interned in Holland (Art. 2): civilians and merchant seamen of the belligerents in any territory in the power of the other party are to be repatriated if they so desire (Art. 3): the surplus of which German civilians repatriable under the preceding article is to be met by the surplus of British combatants repatriable from foreign countries under Art. 2 (Art. 4): civilians and merchant seamen interned in Holland under the Hague agreement of 1917 are to be repatriated forthwith (Art. 5): members of German forces in tropical regions captured, failing repatriation under this agreement or otherwise, are to be transferred to Great Britain forthwith (Art. 6): petty officers and men of submarines, captive for more than eighteen months, are to be interned in Holland (Art. 8): combatant prisoners who have not fulfilled the conditions in Art. 1 are to be exchanged upon becoming qualified (Art. 10). The foregoing provisions are to be published in the Press and in the Camps (Art. 11). Arts. 1 and 8 above and Art. 11 of the agreement of 1917 lapse on August 1, 1919 (Art. 14). Representatives of the Protecting Powers supervise the execution of Arts. 1—11 (Art. 12).

Provision is next made as regards wounded and sick combatants: the camps are to be visited by travelling medical commissions (each of two neutral doctors and one doctor of the captor State) once in every three months, in order to ascertain the combatants repatriable or internable in a neutral country owing to their physical condition (Art. 15): they are to inspect those recommended by camp medical officers, by their Government, or by Help Committees of camps re-

and after referring to the outrages committed or countenanced by the German Government, agreed to their appeal to request neutral Powers to impress on the enemy considerations of humanity and justice.

spectively, with the necessary procedure (Arts. 16, 17 and 18): prisoners suffering from a scheduled disability, but not if self-inflicted, shall be repatriated or interned in a neutral country (Art. 19): prisoners suffering from curable consumption or malaria are to be interned in Switzerland, if from incurable consumption they are to be repatriated forthwith, and nervous debility is to be leniently regarded (Art. 20): adverse decisions are to be communicated forthwith to the prisoners' Government with reasons, etc. (Art. 21): and urgent cases, so recognised by the captors' Government, are to be repatriated or interned at once without waiting for the travelling commission (Art. 22): prisoners recommended by the travelling commission are next examined by a Commission of Control, whose decision is final (three neutral and three captor medical officers), and adverse decisions are to be communicated as above provided (Art. 23): prisoners transferred from either country to a neutral country for internment shall be repatriated, with the co-operation of the neutral Government, if they satisfy the schedule of disabilities, the decision resting with the medical authorities of the neutral country of internment, whose Government is to be asked to conduct examinations every three months (Art. 24): combatant prisoners eligible for repatriation or internment who are awaiting trial may be detained till the end of the trial, or, if undergoing sentence, for two months after becoming so entitled, and civilians upon trial or under sentence till the expiry of their sentences (Art. 26): repatriated prisoners are limited in their employment, combatants being precluded from military service on any front of operations or on lines of communication or in occupied or foreign territory, and naval ones from employment afloat or ashore in which they might be actively engaged with the enemy, and civilians from naval or military service or mercantile marine, including coasters, and any compulsory national service (Art. 26): and they can take their personal property with them subject to certain restrictions (Art. 27). In the second place, detailed provision is made for the treatment of combatant and civilian prisoners, which is to follow the principles laid down in international agreements, particularly being protected from violence, personal insults and public curiosity, and treated humanely, and may not be compelled to do any work directly connected with operations of war (Art. 28). There are prohibitions against compelling prisoners to give information about their army or country, depriving them of personal papers or objects of value (except money, which is held for

them, and banknotes and silver of their country may not be changed without their consent); against their daily work exceeding that of the civilian workers of the district, and, as a rule, ten hours; against their employment in mines and quarries (*c*) if unfitted physically or by their previous occupation, without medical examination beforehand and monthly during its continuance, and they must be removed to other employment not more severe if the examiner thinks it necessary, and they are to be on the same footing as regards duration of work and increase of rations as free workmen in the same class of work (Arts. 28—33). After capture they must be taken thirty kilometres from the firing line (Art. 34). As regards prisoners retained in an area of operations, only those physically fit for labour may be kept there or on lines of communication other than wounded or sick who cannot be transported to hospitals outside it; they are to be treated the same as prisoners in home territory, especially as regards food and clothing and postal facilities; they may only be employed at least thirty kilometres (eighteen miles) from the firing line, and their camps are to be inspected by representatives of the protecting Legation (Arts. 35—39). The capture of every prisoner must be notified in a month to the captor authorities and thence to his own Government, and he can inform his family in a week of his capture and condition (Art. 40, superseding Art. 22 of 1917), and of his arrival or transfer to a camp in three days (Art. 41). Conditions are laid down for the equipment and organisation of camps for officers (Arts. 42, 43) and others, especially as regards housing and sanitation (Art. 44): for their food, their rations to be sufficient, regard being had to the restrictions imposed on the civil population; officers to manage their own messing as far as possible, combatants to receive the same allowance of rationed food as the civil population, in proportion to their categories as non-workers, ordinary workers and heavy workers, and for canteens in camps and for articles of daily use at reasonable prices; for punishments for attempts to escape from arrest or prison or camps, viz., for a simple attempt, even if repeated, fourteen days' military confinement, and if made in concert, twenty-eight days, and if combined with other punishable actions connected therewith in respect of property by appropriation or possession of it or injury to it, two months; if recaptured after an attempt they must not be subjected to unnecessary harshness, any insult or

(*c*) Cf. the Report by the Government Committee on British prisoners employed in coal and salt mines in Germany. (P. P. Misc., No. 23, 1918.)

injury to them to be severely punished, and they are to be protected from violence of every kind, and officers especially to be treated suitably to their rank (Art. 48). Collective punishments or deprivation of privileges for misconduct of individuals are forbidden (Art. 49), and punishments in camp cells to be carried out under specified conditions (Art. 50): Help Committees chosen by the prisoners for all main camps and working camps with more than 100 prisoners of the same nationality are instituted, and a representative for every working party of the same nationality of 10 to 100 men, who is the channel of communication between the working party and the Help Committee who receive and distribute the consignments, etc. of parcels and medicines and, *inter alia*, obtain information for men who have had no news of their families for three months through the captor's Red Cross Committee and the International Red Cross at Geneva (Arts. 51—53). Prisoners may make requests or complaints about treatment or conditions in camps or personal matters to the protecting Legation or verbally to their visiting members through the Help Committee or representative, and the military authorities may not withhold them unless they are intentionally false or insulting, and then the writer and the protecting Legation are informed of the suppression and the reason for it (Art. 54). Provision is made for speedy delivery of parcels and postal service, for sending books and pamphlets subject to censorship, and for the publication of agreements in the camps in the prisoners' own language (Arts. 55—57). Of the foregoing, certain provisions (Arts. 44—58) apply to civilian prisoners equally, with necessary modifications which must not be less favourable to the prisoners than the originals (Art. 59). The annexes to the agreement give details of the methods of transport of combatants and civilians; order of repatriation; minimum conditions for equipment and organisation of officers' camps and camps for ranks other than officers, and punishment of officers in camp.

Both these agreements supply a practical working out of the general principles laid down for the treatment of prisoners by the Hague Convention, the authority of which has been recognised by both sides in the War, but the methods of its interpretation have been different. Both the British and German Governments set up prisoners' bureaux, and our Government extended the rules of the Convention governing pay and treatment of military officers to naval officers. The agreements above cited are the outcome of the

complaints made by our Government in the early part of the War of the conditions prevailing in the German prisoners' camps, as revealed in the reports made by the diplomatic and consular officers of the United States as protector of British interests in Germany, after visiting the various detention and concentration camps there. While there were many exceptions in the form of camps where there was good treatment, diet and medical attention, the conditions of the generality of camps in the early days of the War left much to be desired. The complaints generally were directed to (1) want of clothing, (2) inadequacy of sanitation, (3) harsh or brutal behaviour of the guards, (4) inadequate housing and food, and (5) the nature of the work assigned to the prisoners.

Other grounds of complaint were the treatment of British prisoners after capture and the refusal or neglect to provide them with food and medical aid; their employment in salt mines and coal mines; and their being put to work in the sphere of military operations. The British Blue Books which have been here referred to, deal with Germany and Turkey only. In the latter country, as one might expect, the provisions for the care of prisoners were lamentably inadequate, at least as far as the first stages of captivity were concerned, and the private soldiers underwent great hardships in their journey up country (Mesopotamia) to the prison camps. A single fact is sufficient to illustrate this, viz., that out of the prisoners taken at Kut (over 13,000) about one-half died or are unaccounted for, and the Turkish medical arrangements would have been hopelessly inadequate if they had not been supplemented by our own medical officers.

With regard to complaints of harsh or brutal behaviour of the guards, it has been suggested in some quarters that these are ill-founded, since a belligerent is entitled to inflict the same punishment for disobedience to orders upon prisoners of war as upon his own soldiers.

Although so far as we are aware there are no express provisions in German Military Law prohibiting officers and non-commissioned officers from resorting to physical violence to compel obedience to orders, it is clear that such officers may only impose the punishments therein defined. In no case do such punishments include physical violence. Nevertheless, in spite of these regulations it was the general practice of German officers, and more particularly of non-commissioned officers, to enforce obedience to orders by striking their men with the hand or with sticks.

There is abundant evidence to prove that British prisoners of war were struck with the butt end of rifles and cruelly beaten with sticks for refusal to work, and for breaches of discipline. In many cases they were justified in refusing to work by reason of the military character of the work ordered. In some cases, no doubt, they took a mistaken view, and in others their refusal was due to pure "cussidness." No doubt many British prisoners were insubordinate and extremely difficult to handle, but this did not justify striking on the head with the butt end of a rifle. Such treatment is obviously contrary to the meaning of the term "humane" in the Hague Convention, 1907.

It is true that by the "instructions" issued on April 15, 1917, to officers in charge of working commandos, "if obstinate disobedience is given to the orders or prohibition of the guard and he cannot enforce obedience in any other way," the guard may use the butt end of his rifle. But by the same "instructions," however, "blows with the hand or fist, or with sticks or clubs, and kicks are forbidden." And it is declared that "except in most exceptional and unusual cases, it is inexcusable to lay hands on a prisoner."

We submit that, except in self-defence or to prevent escape, it is contrary to the laws and customs of war, as hitherto understood, to strike a prisoner at all.

Complaints relating to the nature of the work assigned to prisoners were made by both sides. The German military authorities agreed that it was illegal to employ prisoners of war in the manufacture of munitions intended for use against their own countrymen or of those of the Allies, but maintained that they might be employed on preparation work, such as the transport of coke or of ores for the manufacture of shells. Prisoners could only claim exemption from such work as stood in direct relation to military operations in the area of hostilities.

As a matter of fact British prisoners were employed in the factory in transporting coke and ore for the manufacture of shells, and in loading at the factory the finished shells in trucks for the front. This would appear to be work "directly connected with the operations of war."

It was not till the third year of the War that arrangements were made between the British and German Governments (the agreements above cited) for the exchange and release of wounded and sick military prisoners and civilian prisoners above a certain age (1917,

No. 12). And it was not till after a Conference at Berne that as between Great Britain and Turkey repatriation of invalids was agreed to, and also inspection of prisoners' camps in Turkish territory by the officers of the Dutch Legation at Constantinople; nor till May, 1916, that British and German wounded and sick combatant prisoners of war were allowed to be transferred to Switzerland. Germany and France had previously come to a similar arrangement.

In the light of the experience gained in the War and from the provisions of the special agreements between the belligerents, the criticisms of the Hague Convention which suggest themselves are:—

(1) The vagueness of its terms as to the humane treatment and care of prisoners and as to the nature of the work to which they may be set by their captors, the exclusion of "work connected with the operations of war"—but when does such connection begin?—and as to the disciplinary measures allowed for insubordination—a term which may be interpreted with great latitude.

(2) The setting up of a standard that they should receive the same treatment as the captor's own troops. This last point was made use of by the German Government (*d*) in answer to complaints of food and housing accommodation, and punishments such as tying a prisoner to a stake for a certain time because there were no cells available. Unless the requirement of humanity dominates the reference to the circumstances of service of the enemy's troops, this will not protect the prisoner, and "humanity," it is submitted, involves consideration of the conditions of food complying with a scientific standard, e.g., with reference to the Ruhleben Camp, Sir Edward Grey said: "if Germany cannot feed her prisoners properly, it was her duty to release them."

(3) There is no prohibition of reprisals against prisoners in retaliation for some act done by their Government. With regard to this, the International Red Cross made a protest to both belligerents (P. P. Misc. No. 29, 1916, see *ante*). A prominent example of this was the sending of 2,000 British prisoners to work in Poland in retaliation for a like number of German prisoners sent from England to work in France in November, 1916.

(4) There is no prohibition against prisoners of different nationalities or races or colours being confined together. This

(*d*) "Prisoners cannot expect better accommodation than the enemy's own troops." (No. 19 of 1918.)

actually in the War caused disastrous results by one nationality of prisoners communicating infection to another.

(5) Again there is the like want of provisions to prevent any discrimination or difference of treatment between different nationalities.

(6) There is no sanction for enforcing the obligations of belligerents towards their prisoners by giving neutral Powers the right and duty to supervise and inspect all prisoners and the arrangements made for them.

Actually in the War, on both sides, certainly in the later stages, the standard of comfort and care in the prisoners' camps was greatly raised, and the common sense plan was followed of leaving the prisoners free to make their own arrangements as regards food canteens, occupations for their leisure, by means of committees appointed by themselves.

(7) The immediate release of non-combatant prisoners should be provided for. In this War, however, the presence of captive doctors in the prisoners' camps was of the greatest service in times of epidemics, and in certain German camps, Wittenberg and Gardelegen, the captors left the whole work to be done by them. No questions seem to have been raised during the War on the rules of the Hague Convention as to prisoners' parole, but the obligation, in the Anglo-German agreement of 1917, to return prisoners interned in a neutral country has been noticed, and in the case of certain German naval officers belonging to vessels of war interned in the United States when neutral who left the country, their Government recognised that a breach of parole had been committed and undertook to return them.

It is submitted that the foregoing facts and considerations show the need for enlarging and rendering more precise the procedure of the treatment of prisoners, but these do not touch the starting point of reform, namely, the status of prisoners. Combatants at present retain their military status and are kept under military conditions, and except in the case of their services being used for labour, they remain in a state of inactivity which is injurious to themselves and of no use to anybody. Their only military value to their captor is the reduction of the military strength of his opponent. No nation can be expected to consent to exchange able-bodied captured soldiers of the enemy in order to get back his own; but in view of the

cumbersomeness and expense of the whole machinery of prisons for them and the cost of maintaining prisoners and providing them with the treatment which they have a right to expect, is it impracticable to suggest that on capture they should definitely lose their combatant status and be either sent home on parole or interned in a neutral country which is willing, like Holland and Switzerland in the late War, to receive them at the cost of their Governments? Present day wars, in which the whole efficient manhood of the nation takes part, are quite unlike the older ones fought between the professional armies whose trade was war (*e*); the present fighters are all drawn from civil and commercial life, and the loss to the trade of the nation and the society of nations is enormous (*f*), to which must be added all the consequent suffering of the individual. The transfer of prisoners to the province of the civil administration would definitely mark them as assigned to civil employment and work of a non-military character, such as road making, agricultural work, building, manufacturing, in which they would receive the ordinary civil wages, and in the case in which they refused to give their parole, they would be placed like ordinary civil prisoners under the control of the civil power. Their employment would then benefit their captors as well as themselves, as it would set free the civil population of the captor State for work for definite military objects, such as producing munitions of war. All ranks of prisoners should be assigned to particular employment, and officers would be liable to compulsory work no less than privates. Representatives of neutral States should be allowed access for inspection. In the case of invalid and wounded men, similar arrangements to those contained in the special agreements between Great Britain and Germany already noticed for their removal to neutral countries; and in the case of efficient men who had done a long spell of captivity, the same opportunity should be given them. The system of exchanging prisoners should be extended and put on a regular basis, and it should be recognised that if a captor State cannot do its duty in maintaining its prisoners properly—and this may be due to the war policy of the enemy country, e.g. the British blockade—it should be willing

(*e*) Our colleague, Sir Graham Bower, has worked out the results of the "nation in arms" principle on the conduct of war for the Grotius Society in Vol. IV.

(*f*) £600 has been given as the yearly value of the British workman in production.

to let this be done by a neutral country, who must have it made worth its while to do so. It must at the same time be remembered that their repatriation involves the risk to the captor State of valuable information as to its plans and dispositions being given to its enemy. Besides their employment as civil workers, another consequence of their civil status would be their maintenance and treatment on the same footing as the civil population of the captor instead of that of his troops; and due regard should be paid in these respects to such national attributes of prisoners as their religion and caste.

The sanction for the maintenance of the prisoner's status should be an international agreement that any breach of the regulations should be an offence against the Law of Nations and entail personal consequences on the offenders. Representatives of neutral States should be given the power of inspecting and reporting upon the condition of prisoners in belligerent countries to their Governments and the League of Nations when established; or the International Red Cross might have like powers conferred on its officers for the field of military operations.

All the foregoing considerations apply *a fortiori* to the case of civilian prisoners, whose status should have no military character but is more properly regarded as subjection to detention—a police measure required for reasons of public safety either in the territory occupied by the captor's armies or in his own country. There are not many precedents for the latter class coming into existence at all, perhaps the best known being Napoleon's detention of all British citizens found in France on the renewal of hostilities after the Peace of Amiens, which has always been regarded as unjustifiably high-handed. If such persons are dangerous, they should be deported not interned, and the agreements above cited may serve as a precedent for regular mutual repatriation of enemy aliens. But at all events they are persons subject to the sovereignty of the State, and there is no reason for any military form of control over them, and the Hague Convention very naturally does not include them in its scope.

The former class, viz., enemy non-combatant civilians, are taken into custody by the captor's military forces for the like reason, and the same considerations apply to them as to the other class.

It is submitted that if the above view is accepted, prisoners of war will in the future have a definitely fixed status placed under the

protection of international law and beyond the power of their captors to treat them as hostages or as instruments to be used against their native country.

(*Read before the* GROTIUS SOCIETY *on March 25th*, 1919.)

In thanking the authors for their instructive paper, Professor Goudy said it was difficult to get powerful belligerents to adhere to the Hague Conventions. The Germans might find some excuse in the shortage of food, but their treatment of prisoners, even for insubordination, was very harsh and unworthy of a civilised nation. The idea of professional armies had disappeared and conscription had complicated matters.

Sir James Innes said the system of reprisals was most objectionable. The Germans in this respect had been very bad offenders, but we were also to blame, *e.g.*, by prohibiting German prisoners captured in East Africa from corresponding by way of reprisal.

Sir John Macdonell said that if reprisals took place they should be of the same kind. He agreed that the provisions in the Hague Conventions were very vague. Where was the line to be drawn, for instance, in the manufacture of shells? Were the German authorities entitled to treat prisoners of war in the same manner as they treated their own soldiers? Representatives of neutral Governments should be entitled as of right to full powers of investigation. Then there should be some machinery whereby those repatriated incapacitated or injured in health might receive some compensation. Should not prisoners of war be placed under civil authority?

Mr. Carter contended that prisoners ought to be returned on parole or interned in neutral countries.

Sir Graham Bower pointed out the difficulty of this, as returned prisoners might convey to their Government important information, *e.g.*, the method by which submarine warfare was carried on by us in conjunction with trawlers was conveyed to the German Government by a returned German prisoner.

Dr. Bisschop observed that every person employed on civilian work released another person for military operations.

Dr. Bellot said he had already advocated that the repatriation of sick and wounded should be made obligatory; even if Germany had had the desire, she had not the means to treat them properly. For similar reasons it seemed desirable that the provisions of the recent Hague Convention should be extended to able-bodied prisoners and some system for internment in neutral countries adopted.

Proposed by Mr. Phillimore and seconded by Professor Goudy and Agreed that a Committee be appointed to deal with this question and to report. Mr. Phillimore to be the convener and, with the President, to nominate members.

THE FREEDOM OF THE SEAS.

By Admiral Sir REGINALD CUSTANCE, G.C.B., K.C.B., K.C.M.G., D.C.L.

When the Secretary to the Society did me the honour to suggest reading a paper on the *Freedom of the Seas,* I was reluctant to do so until it occurred to me that it might be useful to set forth its military aspect. The wishes of the Society will perhaps be met by an argument based as far as possible on the military side of the question and by reference only to the legal side where necessary to lucidity.

It is generally accepted that under normal conditions in time of peace the high seas are, and have been for some years, entirely free to those who pass upon their lawful occasions. As is well known, this freedom is impaired on the outbreak of war. A full understanding of the reason for this change cannot be reached without a correct knowledge of the principles underlying the conduct of war. These may be briefly summarised.

It will be admitted that the difference between peace and war is that in lieu of argument to persuade, each side uses physical force to compel the other to yield to his will. Furthermore, the acts of all great commanders and the arguments of writers of acknowledged authority have shown that the decisive act in war is the fight or battle, and the decisive factor the armed force which alone takes direct part in the decisive act. The reciprocal primary military aim is therefore to destroy the armed force by battle, or, as that cannot usually be done by one instantaneous blow, to neutralise its action by the threat of battle or by a series of small blows during the interval of waiting. Second only to that aim is the need to impair the efficiency of the armed force, and thus to prepare its destruction by sapping the resources upon which it depends. The action taken to effect this is the same in principle whether ashore or afloat. After the armed force has been defeated or neutralised, the victor or stronger side, on land, overruns completely or partially the territory of the vanquished or weaker side, and deprives him of its resources,

and utilizes them himself, as did the Germans in Belgium, Northern France and Roumania during the late war.

Similarly, at sea, movement on the ocean is more or less free to the stronger side, but is completely or partially denied to the weaker. Unarmed ships as potential instruments of war are seized and used by the captor. Supplies from the outside world can be imported by the stronger side, but are completely or partially cut off from the weaker. These supplies from abroad are sometimes very important, since they are often required to complete the food, clothing, armament and equipment of the armed forces and the food and clothing of the unarmed population, which by production and supply sustains the fighting man and thus plays an important part in carrying on the war, as was seen during the late war.

Moreover, the profits derived from handling the trade, especially that sea-borne, are sometimes very large and may provide much of the wealth required to finance a war, as actually occurred in the case of Great Britain during the great French War. It will be seen that any stoppage of these supplies to a belligerent tends to reduce directly his armed strength by land and sea and to impair indirectly the spirit and *moral* of both his armed force and his unarmed population. As a large proportion of these supplies is usually sea-borne, the stoppage of sea trade cannot be looked upon as otherwise than an essential operation of war, since it prepares success in the decisive battle on land and sea, and thus tends to shorten the war. We have constantly to bear in mind that the interdependence between land and sea is close, although not always plainly seen; also that the reaction of the land operations on those at sea, *i.e.*, of the land battle on the sea battle, and *vice versâ*, may be prolonged in time, but is always working during the war; also that as the land battle and the sea battle are independent tactical activities, the double decision by land and sea, or its equivalent, is necessary. Furthermore, since the greater contains the less, stoppage of sea trade is also a legitimate means of coercion as a substitute for war in time of peace.

Now sea trade is stopped by capture and by the threat of capture, which has for several generations been specifically recognised by the law of nations as a legitimate operation of war probably for the reasons above set forth—either explicitly stated, as in the case of contraband, or implicitly accepted, as in that of enemy goods.

Furthermore, it is common knowledge that the losses due to actual capture are small compared with those due to the stoppage of trade, and therefore the value of the prizes is of relatively small importance. Whatever may have been the case in the past, this right of capture is claimed and exercised now as a means to weaken the enemy's armed force and to shorten the war. To resign or to weaken that right of capture is to throw extra stress on the fighting men on land and sea, and ultimately on the nation. Under modern conditions when whole nations take part directly or indirectly in the fighting, this extra stress may become very great.

As is well known, attempts to weaken the right of capture have been made at intervals from the 18th century onwards. The principal argument used has been that ships and cargoes are private property and that their capture is a hardship on private individuals. The argument has no real foundation, since for several generations both ships and cargoes have been insured, with the result that the losses and the cost of insurance are borne by the whole body of consumers, who pay increased prices to cover them. Is there not some truth underlying the layman's remark that, "seemingly, the only safe place for belligerent private property is at sea."

Again, exception has been taken to the right to capture property on the ground that a different practice is followed on land. The most important difference is that the military commander is a law to himself, whereas the proceedings of the naval commander are reviewed by a Prize Court. The former acts outside the law, the latter under the law. Attention is invited to the difference between the proceedings before the British Prize Court and those followed by Napoleon's marshals during the great French War and by the German generals during the war just ended. These are well known to you and need not be set forth in detail.

That maritime capture is humane when carried out under the rules recognised by international law is evident from the procedure established under them and by the practice of the past. The duty of the captor was then to bring in, for adjudication by a Prize Court, any merchant ship he detained. If the ship captured was an enemy, the rule was not always observed. The United States made a practice of destroying enemy prizes in the war of 1812, but the British and French rule was always to bring them in, if possible. Whether the

ship was brought in or not the safety of the *personnel* was always secure, and the captor had to justify his proceedings before a Prize Court. He always acted under the law and was liable for costs and damages if he took a ship without probable cause. The great change introduced by Germany in conducting the recent war consists in making war at sea inhumane in that the lives of both crew and passengers have been deliberately risked and sacrificed. She aimed at making war at sea as ruthless, brutal and lawless as it too often has been on land. The wisdom of calling upon the captor to justify his proceedings before a Prize Court cannot be doubted. The decision of the Paris Conference seems to extend the principle and to apply it to those who break the law of nations, not only to those who sink ships without warning and thus risk the lives of passengers and crews, but to those who issue the orders to do so.

Again, sea trade is carried on ships, of which some belong to belligerents and others to neutrals, as also their cargoes. Hence neutral interests are affected, and many disputes arise about the rules relating to blockades, contraband, continuous voyage, &c., by which the trade of neutrals with belligerents is regulated and the inconvenience and loss to neutrals in some respects mitigated. In these disputes the immediate interest of the belligerent is complete stoppage of the trade, while that of the neutral may seem to be its continuance uninterrupted, although the reverse is often the case, as in the late great German War, when the general security and the reign of law were menaced.

Usually each side is held back from making extreme demands by action either already taken in the past or possibly required in the future when the parts are reversed. Moreover, the political object of the war, the many-sided friction in the political and international machines, the relative strengths not only of the belligerents but of the neutrals, and the progress of the war all tend to influence the relations between belligerents and neutrals and the action respectively taken by them. In fact, the stoppage of neutral trade with a belligerent has always been dependent upon action taken by the belligerents and either accepted or tolerated by neutrals, or so much opposed by them that they have ultimately joined in the war. On the other hand, trade between neutrals entirely clear of any belligerent taint has usually been free in time of war, except that neutral ships have been liable "to visit and search."

The existing practice having been thus sketched, we can turn to the second point in President Wilson's peace programme, which reads:—

> "II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants."

The Allied Governments took exception to this Clause as being "open to various interpretations, some of which they could not accept." As some justification for this caution it may be remarked that absolute freedom of navigation upon the seas, outside territorial waters, in war seems to mean peace at sea and war on land, as otherwise there will be no war at all. War at sea will only begin when international action is taken. Thus, war at sea is to be limited by international action, but war on land is to remain unlimited. This result tends to undermine the principle that operations by land and sea are interdependent. Again, it is to be specially noted that President Wilson accepts the long-established practice that the seas may be closed in whole or in part, but by international, instead of national, action, and only to enforce international covenants. Everything will depend upon whether international action in a righteous cause can be made as rapid and efficient as that of a belligerent nation or group of nations fettered by friction with neutrals—an important point, seeing that upon it may depend the security of Great Britain and other countries.

(*Read before the* Grotius Society *on July 15th*, 1919.)

The Chairman, in thanking Admiral Custance for his admirable address, said he differed from some of his conclusions.

Mr. Henriques pointed out that the United States came in because of the improper way in which submarine warfare was carried on.

Mr. Manisty said that capture at sea was regulated by law: property did not pass till adjudication.

The Chairman said there was a broad distinction between property on land and that at sea.

Mr. Bewes protested against the use of mines in the open sea.

Mr. Knight thought the command of the sea could be justified as a matter of law and on general principles.

Mr. Farrer doubted whether any scheme could be devised in restraint of improper methods of warfare; the only real check was the fear of neutrals.

Dr. Bisschop emphasised the fact that the seas are free; war interfered with those who wanted to use them; too much stress was, in fact, laid upon their use by belligerents; as far as possible their use by neutrals must be preserved.

Mr. de Montmorency argued that in time of war there was a legal right for a belligerent to "occupy" by exclusion a sea area either through mines or through sea power. A State had a right to occupy a portion of the high seas if it could do so. Mine areas were lawful. By Roman Law the sea could be occupied.

Sir Graham Bower said that freedom of the sea has never been impaired for neutral traffic. A belligerent was entitled to stop a neutral assisting the other belligerent. The Navy was not inspired by the hope of gain. He advocated pre-emption instead of seizure.

Dr. Bellot contended that the sea was *res communis* and not *res nullius*, as some jurists upheld.

The Chairman said there were always two sets of opinions: one when we were neutral, another when we were belligerent. Justice was to be done to both. He doubted whether the world would always agree with the doctrine that belligerent views should always prevail. He doubted whether any nation was entitled to say that a large portion of the ocean should be occupied and barred to neutrals.

Sir Reginald Custance replied.

CARDINAL ALBERONI'S PROPOSED EUROPEAN ALLIANCE FOR THE SUBJUGATION AND SETTLEMENT OF THE TURKISH EMPIRE, 1735.

"*Nihil sub sole novum.*"—Ecc. I. 1.

By W. EVANS DARBY, D.D., LL.D.

One of the questions of the War, belonging therefore to the avowed studies of the Grotius Society, and one of the most important and difficult problems before the Peace Conference sitting in Paris, is that of the settlement of Turkey, which has been a prominent and thorny item in European politics for at least five centuries, during which various schemes have been devised to achieve the most desired result. This was the avowed object of King George von Podiebrad's "Grand Projet" of "Der Christliche Furstenbund," in the fifteenth century. Nearly two centuries later it was a very live issue. A French Consul, who was passing through Belgrade, wrote, in a letter dated January 25th, 1624: "Since I came to Belgrade I have of a sudden discovered that a League has been organised in Christendom to march against the Turkish State this coming spring: I found letters in cipher on the table of my host Ragnosky, who is plotting the affair here . . . . from which I learn that the Pope, the Emperor, the King of Spain, the Grand Duke, and M. de Nevers are in the enterprise . . . . and that all Servia and Bosnia are to rise as soon as the League appears." (See A. Boppe, *Journal et Correspondance de Gedoyen, "Le Turc,"* Consul de France à Alep., Paris, 1909, p. 47.) One of the tasks of the Federal Union projected in the *Grand Dessein* of Henri IV. was to expel the infidels from Europe; and a century later, Cardinal Alberoni wrote his project, which we propose to discuss here, having the expulsion of the Turks from Europe, and the partition of the Turkish Empire as its main objects.

An Italian Pioneer of Pacifism.

From the French of M. Mil. R. Vesnitch (in *Revue d'Histoire Diplomatique*, 1911) we glean the following particulars concerning the Author of the Project about whom, he says, there are few men who have played a conspicuous part in history who have been more the subject of discussion than Cardinal Alberoni. "He has been vilified and glorified with equal passion." The pacifist idea, he observes, as well as that of the juridical settlement of international conflicts, dates much farther back than is generally believed, and has had sincere advocates in all nations. What is of even greater importance, International Arbitration was practised to a large extent, both in the Middle Ages and at the time of the Renaissance. Cardinal Alberoni, who was one of these advocates, was not the first among his Italian compatriots, since four centuries before his time, the Venetian Marinus Sanudo had consecrated his life to that idea (see A. Magnocavallo : *Marin Sanudo il Vecchio il suo Progetto de Crociata*, Bergamo, 1901), while the adherents of pacifism can claim even a Dante Alighieri among their number! For many reasons, he thinks, Cardinal Alberoni is deserving of special attention. The German Gerhoch, he says, the Frenchmen, Pierre Dubois and Emeric Crucé, the Czech King George Podiebrad, the Englishman, W. Penn, the Portuguese Suarez, the Spaniard Vittoria, the Hollander H. Grotius, and many others, have in him a worthy associate, a fact which is made clear by the publication of his scheme.

Something about the Author.

Jules Alberoni achieved greatness. He was born at Piacenza, May 21st, 1664, and was the son of poor parents, who as gardeners, had come to take up their abode in that city. As he grew up the Church Authorities in the Duchy of Parma, who soon became aware of his abilities, made him follow a rigorous course of study in their seminaries, just as they had done before with his compatriot, Jules Mazarin. Starting as scholar and bellringer at the Cathedral of Piacenza, Alberoni, in 1702, became Chaplain to the Count de Roncoveri, Bishop of Borgo di San Donnino, and soon afterwards, when he had learned a little French from the novelist Campestron, the

Duke de Parma made him Canon and appointed him as his representative to the Duke de Vendôme, Commander of the French troops in Italy. At this point the course of his life changes and his political career opens, for in 1706, Vendôme brought him to France, presented him to the king, obtained for him an annual allowance, and then secured his services as Secretary in his military expeditions.

It is not necessary to follow his career; but it is, for our purpose, desirable that, in order to judge of the value of his proposals and his claim to attention, some idea should be gained of his personality and power, and the importance of the immense amount of work he did, in very little time and amidst great disadvantages, during the first half of the eighteenth century. It was in Spain that he achieved his greatest successes and met with his direst defeat, and, dealing with affairs relating to Spain, the Author of MS. 25695 of the *Bibliothèque Nationale* (pp. 204—206) brings him thus into comparison with his great compatriot, Mazarin:

> "Up to this point, we behold in Jules Alberoni another Jules Mazarin. Both were of humble birth; the former was the son of a Piacenza gardener, the father of the latter was a tenant of the Episcopal See of the same city; both started on their career in this bishopric; both attained to the dignity of Prime Minister of two of the principal European monarchies; and, lastly, both rose to the office of Cardinal."

In another place it is asserted that, "Alberoni would have been the Mazarin of Spain had the end been like the beginning." But it was not. His rise was rapid and phenomenal—he ascended the ecclesiastical and social ladder with lightning rapidity. His appointment to one of the most important Spanish bishopries, and his cardinal's hat were due to the fact that he was indefatigable in his activities, inexhaustible in his intellectual resources, and at the same time endowed with indomitable will power—"a man of incontestable talent, of a bold spirit and energetic character" (L. Ferrari, *Delle Notizie della lega fra l' Imperatore Carlo VI e la Republica di Venezia*, etc., Venice, 1723, pp. 250, 260). A German *Universal Lexicon*, Suppl. I., p. 903, speaks of him, in 1751, as a "perfect politician and a great statesman." But "the little Princess of Parma, after her sudden and unexpected elevation to the throne of Spain wanted to rule as absolute mistress, and this prelate-diplo-

matist," although he was her compatriot, was in her way. Europe, too, or rather, says Vesnitch, "the Imperial and Franco-English diplomacy, energetically opposed Alberoni, the Prime Minister of Spain and distinguished Italian patriot," and his downfall followed.

His own reference, written on the morning following his dismissal to one of his friends, who was also his confidant, was most generous: "It was," he said, "the smallest sacrifice that could be made to insure the peace of Europe." Before long he was driven from Spain, followed while on his way to Rome, seized, cast into prison and prosecuted, but successfully defended himself against his detractors. Such an affair, however, sticks, and he was followed by it, with more or less pertinacity, until his death on June 26th of the year 1752, in his native city, which, during his lifetime, he endowed with a college for preparing young men for the priesthood, and to which he bequeathed the major part of his fortune.

So much for his history! Various estimates of the man have persisted: it is only the nonentity, the man without any force of character, who has no detractors, and the loftier anyone's aims and endeavours are, the more certainly will he be misrepresented. This "unworthy priest and dangerous minister," in the opinion of some; this "base valet and dregs of the people, buffoon, charlatan," according to Saint-Simon; this "meddlesome individual" and "second-rate statesman," as Valbert describes him, is, in the judgment of Voltaire, the "most powerful genius which has governed Spain long enough to bring her glory, and not long enough for the greatness of that State." Lord Stanhope passed judgment upon him in these terms: "If Spain could go on in this way and succeed as well in all the other enterprises he means to carry out, there will be no other Power can oppose her." In a "*Notice sur le Regne de Philippe V et sur le Ministere du Cardinal Alberoni*," written soon after his death, we find the following: "Alberoni died in 1752, leaving the reputation of a politician and minister as enterprising and ambitious as Cardinal Richelieu, supple and skilful as Mazarin. But, possessed of their great qualities, he also had their shortcomings. His genius was vast, his projects were immense, but fortune was against him." This "moral portrait," thinks Vesnitch, comes perhaps nearest to the original. But Alberoni has written a description of himself, in a letter of 1742, when he was already advanced in years, in which he says, "The more difficulties a man of spirit encounters in an enterprise, the greater must be the courage, perseverance and obstinacy

with which he shall pursue it: he must never give it up, except when all hope of carrying it out has vanished. In the end, Fortune still honours men of courage."

Publication of the Project.

In 1736, during the lifetime of the Cardinal, a brochure was published simultaneously in German and English containing the scheme. The German title of the book was: Des Weltberühmten Cardinals Alberoni Vorschlag, das Turkishe Reich unter der Christlichen Potentaten Botmassigkeit zu bringen. *Samt der Art und Weise wie dasselbe nach der Ueberwindung unter sie zu Verheilen*, etc. Gedruckt im Jahre 1736. The English title of the book is as follows: Cardinal Alberoni's Scheme for reducing the Turkish Empire to the Obedience of Christian Princes; and for a partition of the Conquest. Together with a Scheme of Perpetual Dyet for establishing the publick tranquility. *Translated from an authentick Copy of the Italian Manuscript, in the hands of the Prince de la Torella, the Sicilian Ambassador at the* Court of France. London:—Printed for J. Roberts in *Warwick Lane;* J. Torbuck *in Clare Street*, Drury Lane, and Sold at the Pamphlet-Shops at the *Royal Exchange* and Charing Cross. 1736. Price 1s. 6d. Two editions of this English publication were printed in the same year.

An Italian manuscript of this work is preserved in the Museo Civico Correr, in Venice (Codice Correr 1206/2643), and is entitled: Progetto del Cardinale Alberoni, per ridurre l'Impero Turchesco alla Obedienza dei Principi Cristiani, e per dividere tra di essi la conquista del Medesimo. The last part of the Manuscript contains a Progetto di una Dieta Perpetua.

Reference is made in connection with the notice of this MS. to an extended Paris correspondence published as early as 1735 in the *Mercure historique et politique*, The Hague (Vol. XCIX. pp. 467—476), in which is printed in full a "Systeme de Pacification Generale, dans la Presente Conjoncture," *translated from the Italian*.

General European Situation.

It is not necessary here, nor does our subject demand, that we should follow the speculations as to the host of writers at this time on the subject of the pacification of Europe in general and the

fervent appeals for the reconciliation of Christian Europe against the Turks. The mere list of these writers, many of them little known, at least in this connection, serves to show the great interest people took in the question. The number of such productions is legion. Cantu, and, after him, Bersani (pp. 385—386), believe that these projects here referred to were written about 1724, although it is also maintained that the main project, associated with the name of Alberoni, could not have been written before 1730. Already, on October 24th, 1718, Alberoni had referred to the Netherlands as the country destined to contribute the most to the general pacification of Europe, and adds at the same time that the Archduke of Austria "will in time become extremely fateful to the rights and liberties of the people." These matters, however, lie beyond the lines of our present inquiry, except to notice to what an extent Alberoni took part in the general discussion in which he was a recognised leader, and, it is hinted by Bersani, sometimes ridiculed. Some lines of introduction to the *Système de Pacification Générale*, etc., refer to "l'eminentissime Cardinal Alberoni" as one of the authors. One thing is absolutely certain, writes Vesnitch, Cardinal Alberoni was always at heart a convinced pacifist; in spite of the compelling necessities that made him wage wars. "War is a chastisement of God," he writes, "Feb. 13th, 1719; and in his letters he frequently expresses regret on account of the instability of conditions in Europe, and the absence of a proper system." The general situation in Europe at that time was undoubtedly propitious to his ideas. In fact, Europe was then, and had been for centuries, full of these seething ideas. Next to the divisions in the Church, which meant general and chronic impotence, the presence of the Turks constituted the greatest menace, and to very many, it would naturally seem the superlative menace. These seething ideas had sometimes broken into action, and always seemed to be on the point of doing so. This we have seen as early as 1624. Approaching the matter on the more personal side, the Cardinal, in the introduction to his scheme says, so reads the text of the author: "My project is the result of long and sustained labour, and I may say without presumption . . . that it is built on the glory of God only, for it is inspired by the fervent desire to see the banner of Jesus Christ wave in the world of the infidels." To form such a project, and to map out a plan for the perpetuation of peace in Christendom may, he intimates, appear to many people a task that cannot be realized; and, since the difficulties must be, of

course, very serious, he asks indulgence for the errors such as must be in every grand design.

It is now time that we came to the scheme itself:

Analysis of the Project.

A brief "Translator's Preface" opens the pamphlet reported above as published in London in 1736.

The Introduction.

The Scheme is introduced by a longer "Introduction" by the Author, which forms an impeachment of Turkish perfidy and treachery, and, founded on these, an appeal to take advantage of the present favourable opportunity to bring the domination to an end.

Part I

continues the argument of the Introduction with special reference to the divisions and quarrels between the Princes of Europe while the professed enemies of Christendom were Masters of large and flourishing parts of Europe and Africa, and Lords of almost the whole of Asia. To his mind, the conquest of the Turkish Empire was so easy at that time that nothing was needed for its realization but a close and disinterested union of the Christian Powers.

The first step to be taken is to summon

A Congress at Ratisbon,

to which the Confederate Powers are to be invited in the name of his Imperial Majesty. There an Alliance is to be entered into for the conquest of the Turkish Empire, in which the quotas of the several States are to be adjusted, together with a partition of the conquests, and equivalents in favour of such Powers as may prefer an accession of territory nearer their own dominions to any distant acquisitions. Two or three points have here to be noted,

1. The interests of the Catholic and of the Protestant States are to be on a footing of absolute equality. This equality is the first condition for the success of the project.
2. The military enterprise must be carefully planned.
3. The territorial partition must be agreed on beforehand.
4. A plan of the military operations deemed necessary is set forth.

Part II.

This sets forth in detail the establishment of a land force of 370,000 men in the proportions assigned to the various European States, together with naval forces consisting of a hundred ships of the line from 50 to 70 guns, and a proportionate number of frigates, etc. and a fleet of a hundred galleys and galliasses.

Part III.

This contains, also in detail, a projected partition of the Turkish Empire, concerning which Alberoni writes: "Here I acknowledge myself at a loss and embarrass'd: To conquer the Turkish Empire is in my judgment an easy labour upon the plan proposed; but to divide it amongst such a number of potentates, to the satisfaction of each is almost insuperable." "However," he says, "as I have hitherto waded through a sea of difficulties, I will run the risque of attempting a sketch of the knotty work."

So a sketch is prepared for the proposed Congress at Ratisbon, setting forth in detail the "Partition of the Turkish Empire to be determined by it."

Part IV.

The following preliminaries must be likewise settled in the Congress:

(1) The religious question within the Empire of Constantinople shall be established on the basis of the Peace of Westphalia without prejudice to the rights, doctrine or discipline of the Greek, Coptic, or Armenian Churches.

(2) A general customs tariff, without distinction or special privileges in favour of any nation, shall be agreed upon for all the Christian Powers.

(3) No Prince nor State whatever shall claim sovereignty over the Archipelago; [a measure] which it is hoped will contribute to the development of commerce and prevent disputes between [rival] flags.

(4) The fortifications along the Dardanelles to be demolished.

(5) The *dominium maris* of the Emperors of Constantinople shall be limited to the Straits of Gallipoli.

The Scheme being settled for the proposed Congress at Ratisbon, the Project resolves itself into two parts:

I. Destructive and Preparatory.

"All things being now settled in the Congress for carrying on the War," says the Author, "the transition to the field will be natural."

Then follows a plan of campaign worthy of the Chief of the General Staff of an army at that time, the opening note of which is, that it will be of great importance to have all the armies in motion at the same time, in order to strike the greater terror amongst the infidels: This plan of campaign gives evidence of extraordinary information regarding localities and strategic positions both on land and sea, which had been furnished him, he tells us, by an old soldier. M. Bernier, whom he had met in the train of the Duke of Vendôme, and of whom he says: "In 1730, I sent this gentleman to reconnoitre all the considerable cities and fortresses of the Turks in Asia and Africa, where he passed for a Mussulman, and where he continued his investigations for three years."

The plan is set forth in detail but does not concern us to-day.

II. Constructive and Permanent.

Three campaigns are considered to be sufficient to reduce the whole Turkish dominions in Europe, Asia, and Africa, under the power of the Christian Confederates; the next effort must tend towards a scheme for preserving them. This can never be effected without a Permanent League of Nations (the name is modern)—"a Perpetual Diet," as Alberoni terms it, "of the Christian Powers, vested with authority to determine all disputes and controversies amicably." Had such a tribunal been established in Christendom we should not have seen Europe so frequently harassed and distracted by unreasonable and unnatural wars, or, we may add, be in the plight we are in to-day.

Scheme of a Perpetual Diet.

I. There shall be for the future, a Perpetual Diet, composed of the Ministers or Deputies of all the Sovereign Princes and States of Christendom, established at *Ratisbon*, to be under the same Regulations and to have the same Forms and Procedure as are now in use in the German Diet there.

This is a concise and so far convenient way of expressing the provision, but it is incomplete and inconvenient, for the details require a knowledge of, or reference to, the provisions of the Diet of Ratisbon, whence evidently came the proposed name also.

The Diet of Ratisbon was divided into three Colleges:

(1) The College of the Electors, consisting of the nine Sovereigns to whom belonged the right to fill the vacancy on the Imperial throne;
(2) The College of the Princes, with a membership of not less than one hundred;
(3) And the College of the Free Cities, composed of fifty deputies.

The voting took place in the order in which the three Colleges are here given, so that the two princely Colleges decided all resolutions by themselves (Duc de Broglie, Frédéric II et Marie Thérèse. Paris. 1853, I. p. 254).

William Penn is included among those who were supposed to have influenced Alberoni. But the place of the first session of Penn's proposed Parliament (Imperial Dyet, or State, of Europe) was to be as central as possible; afterwards, as might be agreed. Penn finds the model for this institution in the States General of the Netherlands.

II. The Controversies that may arise between Christian Princes or States on account of religion, succession, marriage, or from any other cause or pretext whatever, shall be settled by the same number of votes as are required to form a majority by the Constitution of the Empire. Such decision shall be made within the period of one year, reckoned from the date on which the affair is submitted to the Diet.

III. In case one of the Powers at variance shall refuse to submit to the decision of the Diet, within six months after its refusal has been notified authentically and formally, such Power shall be held to be a disturber of public tranquility, and the Diet shall proceed against it by Military execution, until it shall submit to its decisions, make reparation for all wrongs, and reimburse all the expenses of the war entered into for the purpose of enforcing submission. The Quota of the Forces to be furnished by each Prince or State in such contingency, shall be regulated on the basis of the Matriculation now established in the Empire.

"Thus," adds Alberoni, in completing his scheme, "I have given the outline of the most comprehensive designs that have ever yet appeared in the world;—one for subduing the haughty and vast Empire of the Turks; another for a partition of the conquests; and the third for securing them, by this scheme of a perpetual Diet."

We cannot quarrel with him if his vision and his judgment were restricted, or even hazard the criticism that his project would have been improved, had it been more independent and complete. It was a noble achievement and a contribution to a great evolutionary process, whose progress he could not measure. "Real progress," it has been well said, "is an evolutionary process of a slow but sure growth." The contribution which Cardinal Alberoni made to that process is one of many, from the time of Podiebrad downwards, and it is neither very considerable nor very remarkable although his experiences made him think otherwise. But the process is not yet ended; it has, in fact, scarcely begun, and still lacks essential elements. His project is one of much interest just now when the very subject is still under discussion by a greater Congress than that contemplated in his project, and as the result of a greater conflict than any anticipated therein. It has been a long process and the issue is the more significant because it is clearly a fulfilment of the prophecy concerning the Turks referred to by Alberoni as being in several copies of their Alcoran, "*That in the later times, the sword of the Christians will rise and drive them from their Empire;*" with which prophecy his project ends.

(*Read before the* Grotius Society *on July 30th,* 1919.)

SUBMARINE WARFARE.

By Rear-Admiral S. S. HALL, C.B.

The two most notable changes which the war just concluded has produced at sea are that the serious invasion of a country which is a manufacturing one even on a modest scale is now almost impossible; the second, that full command of the sea in the old sense of the term can never be obtained by either of two belligerents.

The impedimenta of a modern army, one need only mention tanks, rule out the first operation, and the fact that we quite nearly suffered defeat by reason of the enemy's submarine fleet, though practically all the navies of the world were allied to us, is sufficient to prove that however preponderating the Naval power of one belligerent may be, the war on that belligerent's communications can proceed almost as though he had no Navy at all. It should be noted in this connection that our geographical position was more favourable than we can ever hope for again as far as submarine war on commerce is concerned.

It follows from these two facts that when nations are at war whose land frontiers or those of its Allies do not join, there remains only one way in which they can attempt to impose their will on each other, and that is by a war on sea communications. Side by side with this has arisen the increasing importance and volume of overseas trade and a corresponding difficulty in protecting it.

I lay stress upon this because it does not seem just that sea trade should be further handicapped by any changes in the law, changes, it should be observed, which have for their mainspring the illegal use of submarines in the early days of their development.

The widespread desire to do something to prevent a repetition of what happened in the last war in the way of indiscriminate sinking of merchant ships, both belligerent and neutral, with all its attendant ills, is quite evident.

My desire is to help to this end, and particularly to give you the lessons which I read as a result of my experience in the last war.

In the papers on the subject which I have seen, I am presuming to suggest that in many, if not in all, there are some gaps to be filled in—the references to submarines themselves give me the impression that they are not quite up to date, and some of the conclusions arrived at are, I submit, undesirable if not impossible in practice.

I find running through the deliberations a general desire to make war less cruel and barbarous, and to distinguish more clearly between combatants and non-combatants. In principle I suppose none will disagree, but believing as I do that all future war will be largely dominated by aircraft, which will inevitably aim at their enemy's nerve centres—his factories, railways and commercial centres—it seems certain that the tendency is strongly in the opposite direction, and that the inhumanity will have to be accepted—there does not seem any escape from it—it was pretty clearly indicated in the concluding stages of the last war; it would have become very acute if the war had continued.

So far as the sinking of ships without warning is concerned, it is true that in the early days of the war real cruelty and hardship resulted, but later, when ships were better prepared, with better boats and rafts and proper drill, the loss of life of non-combatants was extraordinarily small. Ship's boats are or should be particularly safe craft to take the sea in, and in a future similar state of affairs the loss of life, the inhumanity, if you like, might be further reduced. I am not arguing, of course, that it is proper treatment for neutrals, but if, as may confidently be predicted, war will more than ever be waged in future by the whole people and not by combatants only, it is perhaps not unreasonable that the sea-going population should take their share.

I understand that the last rising in Afghanistan was put down by dropping bombs from aeroplanes on Kabul. If we do this one day, I do not see that we can object the next day to our ships being sunk at sight on the grounds of inhumanity or barbarity. The point is, it seems to me, that we do not bomb Constantinople in mistake for Kabul. Aircraft cannot make serious errors in their objectives, whereas submarines can never be sure *who* they are sinking; one flag is exactly like another against the sunset, and it is to the indiscrimination that I suggest objection should be taken; it is the sacred rights of neutrals that need to be safeguarded.

The illegality consisted, as is well known, in the torpedoing of merchant ships without warning, and there is, I think, a strong tendency to take for granted that this is the only way in which a submarine can operate against commerce.

For example, Professor Minor, in opening the discussion on this subject at the Annual Meeting of the American Society of International Law in 1916, came to the conclusion that there must be *no* submarine warfare on commerce, and that it would follow that a submarine ought to be prohibited to approach or pursue a merchant ship whether enemy or neutral on the high seas unless in distress or to relieve distress. This opinion is representative of many, and I would like to outline briefly the general features of the German submarine campaign, in order to show how it failed and why it failed, and in the end provided perhaps the finest vindication of international law in history.

Towards the end of 1914 Germany realised that the submarine was her ideal weapon; she did not feel equal to challenging us for supremacy on the surface, and decided quite rightly for a limited war at sea with a submarine fleet.

She went all out on this originally with the hope of reducing our surface fleet to something like equality with her own, but the temptation to use the torpedo against merchant ships was bound to come, and when it did she succumbed to it and decided to ignore our surface fleet altogether and to plank everything on a submarine war on commerce.

Now she had at that time a clear cut choice of weapons with which to arm her submarines—the gun or the torpedo.

These two require an entirely distinct class of vessel for their proper management, and it is most important to distinguish clearly between them. The submarine torpedo vessel must be comparatively small, because under-water speed and handiness and quick diving are the essential features. This is the class of submarine for attacking warships. She needs no gun at all, or at the most an anti-aircraft gun, but a large torpedo armament. She is a complicated vessel, with no room for prize crews or prisoners.

The submarine gun-ship, or cruiser as she has come to be called, is a much larger vessel. She may be required to carry many prize crews, under-water speed is required only for evasion and not for attack, a torpedo armament, or at any rate a large one, is not required, and so space and weight are available for a good gun arma-

ment and protection, and the loss of under-water speed due to the resistance of the guns and other obstructions does not matter.

Germany, as we know, decided upon the torpedo, and built submarine torpedo vessels in large numbers. Her reasons were, without doubt, that she already had a nucleus of such a fleet. She knew how to manage them, and she hoped to improvise the cruiser qualities so far as the armament was concerned by equipping them with good guns, considering, quite correctly, that the loss of under-water speed resulting from this could be accepted as they only had the comparatively simple task of attacking merchant ships instead of men-of-war. The question of prize crews or accommodation for prisoners which could not be provided in her torpedo vessels she attempted to justify by saying it was not possible.

There was the further advantage to her that these vessels could be laid down at once to a proved design, and so set to work more quickly.

It was estimated also that there would be a great moral effect in torpedoing ships without warning following upon a bombastic declaration of the barred zones, which would largely prevent our vessels from sailing.

The decision to torpedo merchant ships had two very far-reaching results. It enabled us to employ almost any ship as an anti-submarine vessel; trawlers, drifters, yachts, launches, even sailing ships were all pressed into this service, so that we soon had thousands of these vessels out, which made the enemy's task more difficult, and the establishment of convoy further increased their troubles.

The second result which they also discounted was the offence which was bound to be caused to neutrals; this, as we know, culminated in the entry of America into the war and in Germany's defeat.

I believe that had Germany stuck to the law, employed her submarine torpedo vessels against our surface war fleet, and equipped a submarine cruiser fleet for a war on commerce, she would have won the war. Our enormous auxiliary patrols consisting of weakly armed vessels spread out without support, would have been rapidly wiped out in detail, and it would have been impossible to find the cruisers to protect our convoys, which could have been attacked all over the world. A submarine cruiser of 3,000 tons can easily have an endurance of 50,000 miles.

Though America might have entered the war in the end, it is difficult to imagine her, peopled as she is, having done so so whole-

heartedly without the stimulus of having had her ships torpedoed without warning.

Germany did not ignore the submarine cruiser or gun ship altogether; directly the torpedo business began to flag she began them, and large numbers of them were under construction when the armistice was signed. They were indifferent vessels, lacking boldness in design, of poor stability and sea-going qualities, most unpopular with their submarine officers, but poor craft as they were, it is interesting to note one case I remember of legitimate cruiser warfare on commerce. Somewhere about June, 1918, one of these vessels rose on the quarter of a convoy escorted by a cruiser called, I think, the "Perth," and commenced firing at the rear ship of the convoy. The cruiser turned to drive her off, whereupon the submarine engaged and considerably damaged her, but she dived before the cruiser could hit her. The escorting cruiser then rejoined her convoy, when the submarine rose and began again. This time she sank one of the convoy. The former process was repeated, and another of the convoy was sunk, but this time the submarine stayed up too long and was hit by the "Perth." She was not seriously damaged, but she had had enough and made off. Had she had a sister vessel in company, it is difficult to see what could have saved the convoy.

It should not have been difficult for Germany to have produced submarine cruisers quite early in the war. We considered them early in 1915, but since they are solely commerce destroyers, and we were not likely to have to deal with hostile commerce, they were not proceeded with, but by the middle of 1916 we had at sea far larger and more complicated submarines than the type Germany required to enable her to comply with International Law. They are steam submarines of 10,000 horse power and 24 knots speed, with a very large torpedo armament. With five different kinds of motive power for their handling they are full of machinery, but I remember diving one of these vessels with 120 men on board, and I was not sensible of her being crowded. I mention this in support of my statement that there is no question as to the capacity of a submarine cruiser to carry prize crews, take a considerable number of prisoners, and in every way to comply with the law in her operations, if she is designed for it. The type is not much developed yet, and not generally known, but it soon will be, and there will then

be no shadow of an excuse such as Germany made for torpedoing ships without warning.

The conclusion I reach is that all ships, including submarines, can act legally and illegally when commerce raiding, that a submarine transgresses the law when she uses her torpedo without warning in precisely the same manner as a surface cruiser or torpedo craft would if she were to approach without lights at night and torpedo a merchant ship. German submarines actually did this on the surface at night.

In the case of the submarine, as in the surface ship, it is particularly the torpedo which is the cause of the trouble; not only can no warning be given, but it will always be impossible to check the destruction of neutral ships so long as the torpedo is used.

This is a solution I suggest of the laws of war on sea communications which would go far to clear up the position of submarines, and to avoid those cases where neutral ships have been sunk in mistake for belligerents. In the interests of all nations who suffer from a general shortage of ship tonnage, it is hoped that the exceptional circumstances under which prizes may be sunk will be much more rigidly defined; but however rigid they are, the point I wish to make is, that they will have little effect if the use of the torpedo is continued, simply because capture in nearly all cases involves condemnation and destruction in the same act.

It does not seem to me that any new law is required. No one has suggested a law is required to prohibit surface craft from torpedoing merchant ships at night without warning. The fear that torpedo boats would do this when first introduced by the French appears to have been completely removed by the well-known reply of Admiral Bourgois. The advent of the torpedo, he said, whatever its influence on naval material, has in no way changed treaties, the laws of nations, or the moral laws which govern the world.

It is this doctrine which seems to me to require restatement and re-inforcement to make it quite clear in the future that the submarine is not exempt.

I hope I have shown that there is now no more excuse for a submarine using her torpedo against a merchant ship when submerged than there is for a surface torpedo vessel doing the same thing at night. One is just as able to comply with the law as the other. There was some shadow of such excuse in the early days of

the war, and the Germans seized upon it, but it cannot be maintained now.

If there is any qualification whatever, *i.e.*, if the use of the torpedo is not clearly and absolutely forbidden, not only from submarines but from surface ships and aircraft against merchant ships, I do not see how the destruction of innocent ships can possibly be checked, for the question as to who began it will never be answered. All submarine officers are agreed that their frame of mind, particularly in the last two years of the war, was always one of intense suspicion.

It is the custom in submarines to choose some motto or catch-phrase when the vessel is completing, and to put it on a brass plate in a conspicuous position. These mottoes often embody this, though I did go on board one the other day where the commanding officer had close to his periscope the rhyme—

HA, HA, HA. HE, HE, HE.
I can see you, you can't see me,

but he was an incorrigible optimist, and the exception. Vision is so clear through the periscope that it is difficult not to suspect that one is not seen as clearly as one sees. Sir Graham Bower's son, Commander Bower, who is one of our most able and distinguished submarine officers, told me that once when patrolling submerged on the German coast he sighted a trawler with the Dutch flag flying; on closing her he felt certain he saw a disguised gun and was about to torpedo her when she suddenly altered course straight for him; he had to dive deep, and was immediately fouled by an obstruction. He was then quite convinced the vessel was an enemy decoy, and on rising he only just stopped committing an atrocity by seeing in time that he had an ordinary trawl all over his submarine and by the astonished faces of the Dutch fishermen.

Or take the case of a ship zig-zagging. From the ship's point of view there is nothing in law to prevent him making any alteration of course he likes, but from the submarine's point of view, suppose it is misty weather and the ship is making fifteen minute zig-zags, one of which happens to head him straight at the submarine. It will be difficult to convince that submarine officer that it is not a case of attempted ramming, though as a fact it was because he only had time in the low visibility to see one alteration of course instead of a series. Again, if the alteration is away, it will look, to a mind

already full of suspicion of everything that floats or flies, that his periscope has been seen and that the projected prize is escaping.

Is the sighting of the periscope to be counted as a warning in law? and is a torpedo fired as she turns a legitimate method of enforcing the warning?

One other case should be mentioned—that of the large passenger liner. However large the submarine may be, she cannot accommodate the numbers now carried by these vessels, and if the torpedo is permitted, how can the neutral passengers be protected? The law is perfectly clear on this point, and has been agreed to by practically all nations. There is no right whatever to sink such a prize, but short of the prohibition to torpedo her, how can it be carried out? The only proposal I have seen is to disarm the liner. I shall refer to this proposal directly; it is sufficient to note, as Sir John Macdonell has pointed out, that if this were done, you would have, perhaps, the "Olympic" being held up and captured by an armed launch. This seems not only absurd but grossly unjust.

These are some of the practical difficulties that arise if the torpedo is allowed to be used; mistakes are bound to be made, innocently perhaps, but the same result is arrived at whether the merchant ship zig-zags, attempts to ram, run away, or in any way to exercise her right of self defence; the vessel will be destroyed—she cannot be captured by means of the torpedo and taken into port. The arguments that may be used against the proposal to lay an embargo on the torpedo against merchant ships appear to be these:

It will be said that, as in this war, nations fighting for their existence will not forego the use of the most convenient weapon.

This is certainly the most serious objection, because if merchantmen are forced into convoy for fear of submarine cruisers, as I believe they certainly will be, they appear to lose their non-combatant standing, the mere presence of an armed cruiser implies an intention to resist visit, and as far as I can ascertain lays the convoy open to torpedo attack without warning.

It is an interesting point, as from the day that we adopted the convoy system the German submarine campaign became legitimate, though I have never seen this claimed by Germany or acknowledged by the Allies. I am aware that America obtained indemnity from Denmark after thirty years' legislation for American vessels condemned as lawful prize because they had been in convoy, but these

were neutral ships which had joined a belligerent convoy, and the distinction between an intention to resist, as evidenced by the escorting cruisers, and an actual act of resistance has not, I believe, been claimed for belligerent convoys. In any case, these convoys of ours were armed with depth charges, and, besides having destroyers zig-zagging at high speed on their flanks, were themselves zig-zagging, which is surely an actual act of resistance.

Serious, however, as this objection is to the prohibition of the torpedo, there are two factors now which were absent in the last war.

We have in the first place the almost unanimous verdict of all nations against it, and the fact that America considered her objections strong enough to declare war upon.

There is the fact that Germany lost the war by it; that it did not in fact succeed though carried out on a large scale, and whereas the submarine was hardly mentioned in International Law before, it is to be hoped that very definite rulings as to its behaviour will be made before the next war takes place.

Is it too much to expect that nations should put their often-expressed abhorrence of torpedoing without warning into a practical form—the right to torpedo *after* warning has been given would not be of any practical value—or to put it another way, is it possible that any nation will come to a conference table now and demand to reserve the right to repeat the practices of submarines as carried out by Germany?

The deterrents that already exist are at any rate strong ones, and though such an embargo as I have suggested may be broken by a country *in extremis*, this is a contingency we are bound to reckon with, whatever rules are made. The only remedy as far as submarines are concerned is their total abolition. Even this is only a partial one, for the torpedoing of ships at night by surface vessels without lights is no more expressly forbidden than is that of doing so by submarines in daylight.

It seems necessary, therefore, that the embargo on torpedoing merchant ships should apply to all war ships.

It may be argued, also, that submarines have a perfect right to torpedo ships in convoy such as I have described. Some of our convoys in the last war often contained vessels of six different nationalities, circumstances in the future may demand neutral

convoys, and the reply to this objection is that a submarine is quite unable to distinguish between one convoy and another, that when large convoys are at sea vessels become detached, and spread over large areas, vessels not in convoy get mixed up with them; and, again, if the torpedo is allowed mistakes will be made and innocent neutral ships will suffer. It can be said, also, that if nations wish to attack belligerent convoys, their submarines must be sufficiently powerful to do so in accordance with the law, as must any other class of war vessel.

It is true that the submarine torpedo vessel is a smaller and cheaper vessel, and a particularly potent weapon for the smaller Powers. If only to restore the balance, therefore, I would suggest that certain restrictions are also needed for surface war vessels and merchant ships. These restrictions are in fact the necessary complement of the embargo on the torpedo, and it should certainly be permissible to take a prize into a neutral port.

However fair-minded and humane a submarine officer may be, once he has been bitten by a decoy it will be difficult to persuade him not to use his torpedo against a suspected decoy; mistakes will certainly be made, and the whole game will begin again.

The abolition of decoys and disguise is, in fact, a necessary corollary to the prohibition of the torpedo; unless they are forbidden you cannot prevent the torpedo being used. This must apply not only to the disguise of a man-of-war as a merchantman, but to the disguise of the latter by fitting guns behind moveable screens, to the fitting of torpedoes, depth charges, and so on, to the use of false colours, and to the practice of working submarines in company with merchant ships, the latter being used as bait.

I have seen it suggested that a remedy for the destruction of merchant ships lies in the abolition of the right of such ships to act in self-defence, whether by guns, zig-zagging, ramming, or running away, &c.

In return for this the merchant ship is not in any circumstances to be destroyed, and the captor may take her into a neutral port.

The arguments against this are well known to you, and I would add to them that the moment these defenceless ships went into convoy, which seems to me inevitable, the sinking would go on unless the

torpedo is prohibited, the only difference would be that the convoy would be unarmed.

It does not seem reasonable to prohibit the arming of merchantmen unless convoy is also forbidden, and that is a proposal few would care to make.

I remember each day of the German submarine campaign a list was given me of the ships attacked by submarines; it was always a long one, but one derived considerable satisfaction from the notation in the margin against a large proportion of the encounters (a much increasing proportion in the last year of war) that they were attacked but had escaped!

I fear that without this right of defence we should have had small chance of victory; it would, I submit, be placing a halter round the neck of our sea trade which, on the outbreak of war, would strangle it. It would place the submarine in an unduly favourable position and leave a clear road open for indiscriminate sinking of ships in convoy or of all ships directly a mistake was made or any misunderstanding arose.

I have suggested that the proposal to take prizes into the nearest or most convenient neutral port should be adopted if the torpedo is forbidden, to restore the balance to weaker Powers, because I do not consider that prizes are likely to be recaptured.

During one cruise in the Baltic when our submarines had sunk a dozen or more German ships, a cruiser was sent to drive them off; she was torpedoed and sunk, and so was a second one, before the Germans learnt the lesson that you cannot drive submarines off by cruisers.

It appears, therefore, that the proposal to allow prizes to be taken to a neutral port, taken in conjunction with the proposal to disarm merchant ships, is only a further addition to the unfair price to be paid for the prohibition to sink. It might benefit the world at large, but the country most concerned would lose the war over it. It should be noted also that if the rules were disobeyed or if any misunderstanding arose, if any of our ships, for example, accidentally altered course towards a periscope, the sinking at sight would surely be revived at a time when the whole of our mercantile marine was unarmed.

There is one other aspect of disarmament which should be con-

sidered. Our mercantile marine did great things in the last war, and they have thereby added very great lustre to their tradition. This will be very highly prized by them in the future; it will improve their recruiting and position generally. The country will see to it, I hope, also that the men are properly paid and the best class attracted; men who, as in the last war, formed an invaluable reserve to the R.N. If you tell these people that in war they are to hand their vessels over to the first enemy they meet you will undermine the whole of this fabric; it seems to me it would be almost a death-blow to the tradition and *morale* of our seamen.

I submit, and with this repetition I will close my paper, that unless the nations agree to prohibit the firing of torpedoes by any vessel or aircraft against merchant ships, unless, in fact, they establish by law what appears to be already tacitly agreed to by custom as applied to torpedoing ships at night without warning, and to agree also to common action against any offender of this law, the same action it may be noted which some took in the last war without any prior agreement, the wholesale destruction of ships cannot be prevented.

Bound up with this prohibition of the torpedo is the establishment of the practice of taking prizes into neutral ports and the prohibition of the use of false colours, disguise and decoys of all kinds.

(*Read before the* Grotius Society *on October* 22*nd*, 1919.)

In thanking Admiral Hall for his interesting and valuable paper, Sir Graham Bower said that the Guerre de Course never yet won a war, but it had frequently lost a war, and it had lost the last war.

Mr. Whittuck thought the proposal to prohibit the use of torpedoes was a most practical suggestion. Under the League of Nations it would be easier to obtain enforcement. He asked whether convoys would be open to attack.

Mr. Yoshida approved of the prohibition.

Mr. Sanford Cole considered it was highly desirable to decrease inhumanity: the prohibition should be endorsed by the League of Nations.

Mr. Henriques said that in order to enforce the law, neutrals must be induced to join if the law were broken.

Mr. Kaeckenbeeck agreed with prohibitions.

Dr. Bellot considered that it was useless to prohibit, unless the law was enforced not only during the war, but after the conclusion of peace. At present, unless there was a special provision in a treaty of peace providing for the surrender of war criminals, the courts had no jurisdiction. He thought the only logical conclusion to be drawn from the prohibition was the disarmament of merchant vessels.

REVISION OF THE LEAGUE OF NATIONS COVENANT.

By F. N. KEEN, LL.B.

At the date at which I am writing this paper the League of Nations Covenant has not become legally operative. It will come into force when the Peace Treaty with Germany has been ratified by three of the principal Allied and Associated Powers, parties to the Treaty. Such ratification has not yet taken place, but I am going to assume that it will be carried out and that the League will be formally established on the basis of the Covenant, as incorporated in the Treaty.

The Covenant has in some respects surpassed, but in other respects has disappointed the hopes of many of the advocates of a League of Nations. It has been widely criticized, and is undoubtedly open to serious criticism in some respects. The wonder is, however, not that it should be open to criticism, but that so much should have been attained. Even in its present form, it marks an extraordinary advance upon the past. Striking evidence of the ability, patience and persistency of President Wilson and his colleagues in Paris is afforded by the fact that agreement has been reached among the representatives of so many nations upon a document representing so great a revolution in the regulation of international affairs.

The League, coming upon the world as a new growth, will need careful tending and nurture before we can be sure that it is established firmly enough to stand the strain of drastic change. Those who are eager to see a great future for the League will, therefore, in my judgment, be wise not to press for the making of large amendments in the Covenant at once, but to bend their energies for the present mainly to the task of getting the League into active work in the form now arranged. Some delay in the amendment of its constitution, besides giving the League a better chance of becoming firmly rooted, will enable the process of amendment, when it is entered upon, to be pursued with the advantage derived from actual experience of the working of the League.

Nevertheless the need for amendment must not be shut out from view, the facts and arguments bearing upon the question of amendment must be studied, and the procedure by which amendment is to be carried out must be settled.

In my judgment the League ought to take into its own charge the work of preparing the way for the improvement of its constitution. It should realise that the question of amendment is not merely a matter of the moment, but one that will probably need frequent consideration in future, and with this prospect in view it should, as one of its first acts, set up a standing commission to study questions of constitutional revision and to advise the League upon them.

Such a commission would, of course, require to have placed at its disposal the records and evidences of the work and proceedings of all departments of the League. There would also naturally be referred to it all criticisms of the League's constitution and any proposals and suggestions for amendment either made by persons engaged officially upon the work of the League or emanating from outside sources. The commission would thus form a great mill for working up all available material with a view to producing, when the appropriate time arrives, the wisest possible set of recommendations with regard to the form into which the constitution of the League should be shaped.

I suggest that the Society I have the honour of addressing might usefully pass a resolution advocating the appointment of such a commission. I think it would be unwise for the Society to commit itself to the advocacy of specific amendments, and no other resolution with respect to the revision of the Covenant seems to me necessary at this stage.

If the outcome of our discussion is to be limited to a proposition of so moderate a character, I think that in approaching the criticism of provisions of the Covenant dealing with matters of far-reaching importance, we may reasonably allow ourselves a greater sense of freedom than that which we should feel if we were contemplating the passing of resolutions recommending definite amendments.

I propose now to indicate shortly some of the most important respects in which the Covenant appears to me defective, and I have little doubt that the Society will be satisfied that there is a good case for the making of some changes in the constitution, powers, and duties of the League.

One of the provisions of the Covenant that has given rise to the

greatest searchings of heart is Article 10, whereby the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all the Members. Looked at from one point of view, this Article involves for every Member what is, perhaps, the greatest boon to be conferred by the League—a new source, and a new sense, of security. The fact that a State has a clear acknowledgment of its title to be free from trespass by any fellow-Member of the League, and is also entitled as of right, in the event of an unjust attack upon its territory or independence, to call for the assistance of all its fellow-Members, is calculated not only to reduce the risk of armed aggression, but in time to banish the haunting fear of aggression, which has been so grave a source of world unrest. When looked at, however, from the point of view not of the benefit conferred but of the obligation imposed upon the Members, Article 10 presents considerable difficulties.

A nation may be content to rest under an obligation, onerous though it be, to join in guaranteeing the "status quo" where it is clear that the "status quo" is, under all the circumstances, just and reasonable. But supposing it should become clear that the "status quo" is unjust or unreasonable, how can all the Members of the League be expected contentedly to remain under a permanent obligation to support it? Article 10 seems to involve the risk that the Members of the League may be subjected to an unreasonable liability unless adequate facilities exist for enabling the League to require that changes of territorial boundaries and of political status shall be made from time to time if and when justice and reason so dictate. I do not think the facilities at present provided in the Covenant for bringing about such changes can be described as adequate.

Let me take an assumed case for the purpose of illustration. I have not myself the means of judging, and do not presume to express any opinion, as to whether all the new State-boundaries laid down in the Peace Treaty are or are not the most suitable, but supposing it should turn out that at some place an undesirable line has been chosen, it would seem very unfortunate, to say the least, that all Members of the League should be under obligation permanently to support that line and if necessary to go to war in order to defend it.

The only event in which the League would be able to force an

alteration of the line, in the absence of agreement between the parties concerned, would appear to be the event of a dispute arising upon the matter, and being referred to the Council of the League, and the members of the Council, exclusive of any representatives of the parties to the dispute, being unanimous in supporting a particular alteration of the boundary. This does not seem to me an adequate security for ensuring necessary changes, and in view of the obligations imposed by Article 10, I think an amendment of the Covenant ought to be made which would give to some tribunal or authority within the League power to impose changes of boundary where a strong case is made out, even though absolute unanimity is not obtainable.

Another important matter in which the Covenant seems to me defective, concerns the relative positions of the Assembly and the Council, and the general requirement of unanimity as a condition of action by either of them. This requirement extends to all cases except those in which express provision is made by the Covenant or the Peace Treaty for action to be taken by a majority. The general scope of the powers of the Assembly and the Council is similarly defined in the case of each body, authority being given to deal with "any matter within the sphere of action of the League or affecting the peace of the world."

Let us suppose that the League will comprise forty Members, and that the Council will consist of representatives of the nine States named for that purpose in the Covenant, namely, the United States of America, Great Britain, France, Italy, Japan, Belgium, Brazil, Spain, and Greece. The nine States, if unanimous, would be able to exercise large powers. The forty States, in order to exercise the same powers, would equally require to be unanimous. A majority of the forty States, if it disapproved of action proposed to be taken by the Council of nine could not, even though it comprised all the thirty-one States not represented on the Council, prevent the nine from taking the proposed action.

Assume further, for purposes of illustration, that eight of the Members of the League should wish the League to take some important action, say for safeguarding the peace of nations under Article 11, or for controlling the trade in arms and ammunition under Article 23 (d), and assume that the eight were all represented on the Council, and that the remaining one of the nine States on the Council objected to the proposed action. The proposed action would

in that case have to be given up unless and until the one dissentient on the Council could be persuaded to agree to it. Assume that the same proposal were then brought up at the Assembly and that the eight States succeeded there in persuading the remaining thirty-one to support it. The League would still be unable to act unless the one dissentient could be induced to withdraw its opposition. If, on the other hand, the eight failed to persuade a single one of the thirty-one States that the action was desirable, but they succeeded by some means in overcoming the opposition of the one dissentient on the Council, the action could then at once be carried out by the Council.

Other examples might be given of the power thus residing in a single dissentient State, provided that it is fortunate enough to be represented on the Council, and of the impotence of the Assembly to take action in the face of the dissent of even a single Member. Thus, under Article 22, which deals with Mandates, it is provided that the degree of authority, control, or administration to be exercised by a Mandatory shall, if not previously agreed by the Members of the League, be explicitly defined in each case by the Council. A single Member of the Council could thus negative the issuing of any Mandate of which it disapproved either wholly or on some matter of detail, while all the States unrepresented on the Council would together be powerless to insist upon even a single amendment in opposition to a unanimous Council.

In view of the fact that with regard to such important matters as the amendment of the Covenant (under Article 26) and the alteration of the constitution of the Council (under Article 4), the Assembly is empowered to proceed by a majority in giving confirmation to a decision of the Council; that Article 1 leaves the admission of new Members to the League to be decided simply by two-thirds of the Assembly; and that in other parts of the Peace Treaty such important decisions as, for example, those to be taken under the Annexe with respect to the Saar Basin, are entrusted to a majority of the Council, it seems to me only reasonable that some safeguards should be introduced into the Covenant to minimise the risk of the League being rendered powerless, by lack of unanimity, to take action urgently required in the course of its ordinary work. I cannot help thinking that at any rate the will of an overwhelming majority of the Assembly, even in the early days of the League's career, ought to be protected against permanent obstruction at the instance of a small

minority of States representing a small minority of the population within the League, except, perhaps, with regard to certain defined purposes to be expressly reserved for unanimous decision.

Even in the case of such matters as the amendment of the Covenant and the alteration of the constitution of the Council, it seems to me inexpedient that the lack of absolute unanimity upon the Council should be a complete barrier against any action being taken by the League.

A change that would tend to reduce the risk of friction and divergence of opinion between the Assembly and the Council would be the insertion of a provision requiring that the persons who are to constitute the Council should be chosen from among the representatives of their respective States on the Assembly. It seems only natural and expedient that at the deliberations of the larger body, which is to meet at longer intervals but when it meets may deal with subjects that the Council has previously been dealing with, the members of the Council should be present and able to justify their policy and actions and to assist with their advice.

The next matter to which I desire to call attention is the absence from the Covenant of any adequate provision for the discharge of legislative functions by the League. Ultimately, as it seems to me, the most important work of the League will consist in the laying down, in a legal code, of the principles and rules which are to govern the conduct of States one towards another. I see no means of effectually preventing war except the establishment of the reign of law among nations. Although the stages of evolution may be gradual, I think the League must and will eventually become an organisation in which some appropriate body or bodies will, by majority vote, lay down positive laws to regulate those matters of world concern which give rise to disagreement, friction, and difficulty between nations; laws which will be supported by the public opinion of the world and enforced, in case of need, by coercive machinery provided through the League.

A code of law to be evolved by the League may be expected ultimately to fall into four divisions as follows:—

1st. Constitutional law, that is to say, the law regulating the constitution, powers, duties and procedure of the League, and the status of the Member-States as constituent elements of the League.

2nd. General laws regulating the general relations between States.

3rd. Special laws regulating the relations between particular States with regard to particular matters.

4th. General laws regulating relations, not between States, but between individual and individual or between individuals and governments, upon certain matters with regard to which uniformity of law throughout all the leagued States is desirable and attainable. Article 23 indicates some of the principal subject-matters with which laws under this heading might seek to deal. The framing of such general laws would seem a natural outcome of the experience to be gained by the Labour Bureau and other international co-operative institutions, the establishment of which is contemplated by the Covenant and the Peace Treaty.

It was perhaps hardly to be expected that the framers of the Covenant would go a great way towards clothing the League with full authority as a legislative organ. I think, however, it was also hardly to be expected that they would omit, as they have done, to provide expressly for the exercise of any legislative functions by the League, and I regard it as highly desirable that the omission should be repaired, and that a beginning should be made with the development of legislative machinery within the League, upon however tentative and cautious a basis. The Assembly would seem the appropriate body to entrust with legislative powers.

Another important defect in the Covenant is the lack of adequate provision for popular control. It is the great mass of the people in each country who are most vitally interested in seeing that war is prevented and co-operation is promoted among nations. In relation to the League of Nations therefore, as well as in relation to national government, the people should know and understand what goes on and be able to assert and enforce their united will. To this end it is expedient that the members of the body exercising paramount authority within the League should in some way be representative of and responsible to the people of the various nations. The Assembly is the only body within the League containing delegates from all the leagued States. No provision is made for ensuring that its Members shall be appointed otherwise than by the unfettered choice of the governments of the States, nor is the Assembly invested with the controlling influence over the policy and proceedings of the League. In order to give a theoretically complete democratic control the representatives on the Assembly would need to be elected by direct

popular vote upon a uniform franchise, the weight of representation of the various States in the Assembly being proportioned to the relative numbers of the populations concerned. Some such form of constitution may come in time, but it would probably be taking far too great a leap to impose it upon the League at once. I see no reason, however, why a stipulation should not be made that the appointments of the representatives upon the Assembly for each State should be either made or confirmed by a national assembly elected by popular vote. If any Member State had not such a body as part of its existing constitution it could create one especially for the purpose of serving as an electoral college for appointing the national representatives upon the Assembly of the League. If the adoption of such a stipulation as to appointment of representatives were to result in the spread of democratic national parliaments of fairly uniform type throughout the countries comprised within the League this would be an indirect advantage flowing from the existence of the League.

Such a parliamentary confirmation of the appointment of members of the Assembly would have several direct advantages. It would give added dignity, authority, and power to the Assembly, and would facilitate its occupation of the position of indisputable supremacy which ought to be held by one body within the League. It would assist the development of the legislative side of the functions of the League, partly through bringing more effectually to bear upon the League the influence of those who are trained and experienced in the work of legislation, partly through facilitating the co-ordination of national and international law, and partly through placing behind the laws promulgated by the League an added weight of popular support. It would also tend to increase public interest in the proceedings of the League and public knowledge of international affairs throughout the countries comprised in the League.

The regulation of armaments is another matter upon which the League requires a better equipment than the Covenant at present gives it. Two opposite purposes need to be served by the League in this direction. On the one hand the League needs to ensure that the armament of each of its Members shall be kept down so as not to exceed a reasonable maximum limit, lest any Member be tempted to use a position of excessive power as a menace to its neighbours or as a means of imposing an oppressive or unjust policy upon other Members of the League. On the other hand the League needs to

ensure that every Member shall be prepared at all times to take its fair proportionate share in the duty of using physical force, should that become necessary, for maintaining peace and securing that due effect is given to the agreed basis of international relations involved in the constitution of the League.

The Covenant recognises the necessity for reduction of armaments down to a limit which is defined in vague and elastic terms as "the lowest point consistent with national safety and the enforcement by common action of international obligations." It also provides that the Council shall formulate definite proposals for giving effect to this reduction, and that the Members of the League are to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes, and the conditions of such of their industries as are adaptable to warlike purposes. The Covenant does not, however, lay down any principle with regard to the acceptance by the Members of an obligation to maintain or contribute to the maintenance of the necessary forces for preserving peace and discharging police duties in connexion with the League, nor does it make any provision for enabling the League itself directly to control, supervise, or check the carrying out by Members of their obligations with respect to armaments. In both of these respects the Covenant seems to need amplification.

The machinery provided by the Covenant for the settlement of international disputes requires revision in more than one respect.

In the first place the obligation imposed by Articles 12 and 15 to refer disputes either to arbitration or to inquiry by the Council is expressly limited to any dispute "likely to lead to a rupture." I see no necessity for this limitation, which seems to set a premium on threats of violence and to involve the risk of a denial of justice to States that maintain friendly relations towards others with which they are in disagreement.

In the second place revision is required with the object of removing any opportunity for war. The old Adam dies hard. Pious declarations have come from all sides during the war that this war must be the end of all war, and never again must humanity be subjected to the tragic experiences which the stupid and barbarous practice of war inflicts upon it. In spite of these pious declarations, however, the Covenant leaves us in the position that, although sudden war is entirely discountenanced, yet if a dispute arises which the parties do not agree to be suitable for submission to arbitration and with

respect to which the members of the Council, other than the representatives of the parties to the dispute, do not unanimously concur in recommendations for settlement, war remains an open course. I think it ought not to be beyond the wit of man to devise a tribunal of persons to a majority of whom all the Members of the League would agree more or less contentedly to bow. The Members might then join in a clear and total prohibition of war and thus save themselves, each and all, from the danger and reproach of allowing war to come among them as an admitted and acknowledged guest.

For the decision of such disputes I think the nations would probably be disposed to accept a permanent tribunal constituted for this express purpose and with special regard to its disinterestedness and impartiality, rather than an executive body such as the Council of the League.

The conferring of legislative powers upon the League ought to facilitate the acceptance of such a tribunal, for the development of international law would tend to enlarge the area within which fixed standards would be available for the settlement of disputes and to restrict the area within which discretion would have to be exercised by the tribunal in their settlement.

If war can be entirely prohibited within the League, and the settlement of disputes of every kind by peaceful methods can be satisfactorily provided for, the way is made easier for the effectual regulation of armaments, since the nations will have no legitimate ground upon which to maintain armaments for use against other Members, except so far as may be necessary for preserving peace and public order and upholding and enforcing the laws and decisions of the League.

Article 16 provides that should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League. Such other Members undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not. It is also made the duty of the Council of the League in such case to recommend to the several Governments concerned what effective military, naval or

air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League. These provisions seem to me to call for revision in several respects.

I think it is a mistake to treat the police action of the League as if it were the taking up of a challenge laid down through an act of war on the part of a recalcitrant Member. We want to get rid of war in the old sense and not to perpetuate the idea of it by regarding a recalcitrant Member as being at war with the League. I think also it would be expedient that, before compulsory action by all Members of the League is required or allowed to be taken, a declaration should be made by some competent authority on behalf of the League, that the occasion has arisen for the taking of such action. I think, further, a discretion should be vested in some authority of the League to say what form the compulsory action should take. It seems to me a mistake to provide that an economic boycott should follow automatically and at once. It is by no means certain that such a boycott would be a necessary remedy or the most appropriate or the most effective remedy in the circumstances of every case. Article 16 seems to contemplate the economic boycott and the use of armed force as the only remedies. Who can say that the League may not be able to devise some other remedy less burdensome to those using it, but sufficiently drastic to be effectual in some cases? If such a remedy were available it would seem a mistake that the League should not have the alternative of using it.

It is not clear why the procedure that is deemed appropriate in the case of the breach of Articles 12, 13 and 15 should not also be applicable in case of an aggression in breach of Article 10. My impression is that it would be well to have uniformity of procedure in all these cases.

Another matter for revision arises under Article 22. By this Article the system of administration under mandate is made applicable only to colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them. Apart from Article 22 and the declarations of policy in Article 23, the Covenant does not make any provision for securing minorities or classes of population in any State against unjust or oppressive treatment. No doubt the question of the limits within which it is wise to allow interference by the League with matters concerning internal government and administration of territories of Member-States is a very thorny one, but I

think there ought to be some provision made for rendering the mandatory system applicable in cases other than those specified in Article 22, if its adoption can be shown in the particular circumstances to be reasonable and expedient, and that the system should be further extended by allowing a mandate to be entrusted in appropriate cases to a commission or officer of the League, instead of to a Member-State. It might also be provided that, without requiring the intervention of a mandatory, special regulations could, in suitable cases and under proper conditions, be laid down by the League with respect to the government of particular territories with a view to preventing oppression and ensuring just and orderly administration. The sections of the Peace Treaty dealing with Poland and the Czecho-Slovak State provide that those States shall accept and agree to embody in treaties with the Principal Allied and Associated Powers such provisions as may be deemed necessary by the said Powers to protect the interests of inhabitants of those States who differ from the majority of the population in race, language or religion. It would seem to me more reasonable that special minority protection of this kind should be in the hands of the League of Nations and governed by general provisions which would allow its application to other cases for which it might prove appropriate.

I think the Covenant does not make adequate provision for the disclosure of documents affecting international relations. Article 18 provides for the registration and publication of treaties and international engagements entered into hereafter by any Member of the League, but does not refer to existing treaties. It seems to me likely that the League may be embarrassed in dealing with some of the questions of international policy that may come up for its consideration, unless it has the opportunity of reference to any existing treaties and engagements affecting the questions at issue. I suggest, therefore, that some power should be vested in the League to call for the disclosure by Members of any existing treaties or engagements bearing upon any particular subject-matter.

Some express provision seems also desirable for the publication of mandates issued under Article 22 and of all general regulations and laws of the League and its Members affecting international action and relations.

Article 21 provides that nothing in the Covenant shall be deemed to affect the validity of international engagements or regional understandings for securing the maintenance of peace. Treaties of arbi-

tration are cited as an example of international engagements, and the Monroe doctrine as an example of regional understandings. This vague provision, as now worded, seems to me to involve a risk of undermining to a considerable extent the benefit of Article 20, which provides that the Covenant is to abrogate all obligations or understandings of the Members of the League *inter se* which are inconsistent with the terms thereof. Time alone can disclose which of the products of pre-war diplomacy would be claimed or held to come within the category of international engagements for securing the maintenance of peace, or within that of regional understandings for securing the maintenance of peace. In order to ensure that the beneficial results to be derived from the establishment of the League shall not be unduly whittled down, I think the scope of those expressions should be further defined and narrowed.

Article 1 places a fetter upon the right of a State to withdraw from the League by providing that all the international obligations of the withdrawing State, and all its obligations under the Covenant, shall have been fulfilled at the time of its withdrawal. This may perhaps make membership appear to some States more risky, and therefore less attractive, than it otherwise would be. If a State should unfortunately decide to withdraw, it should be expected in ordinary course to perform all its obligations up to the time of its departure, but it seems to me inexpedient to render the possibility of withdrawal dependent on any condition save the two years' notice of intention to withdraw.

There are various other matters with regard to which one might suggest revision of the Covenant, but I have thought it best in this paper only to raise points that seem to me of major importance. Looking at the whole range covered by these points one realises what immense possibilities of development lie in the League of Nations. A new creative force has been brought into the world. No man can set a limit to the growth of the organisation which that new force is creating. No man can set a limit to the beneficent results which will flow from the co-operation of the nations under such an organisation. It is the privilege of this generation to see the foundation of a new order which offers the most hopeful possibilities for human progress. It is the responsibility of this generation to study the conditions that are necessary for the highest and best development of the League and to do all that in them lies to promote that development.

That is the spirit in which I ask you to approach the question of the revision of the Covenant. Not unmindful of the services of those whose effort has hammered out this instrument of peace, not undervaluing the product of their labours, not hesitating to accept and use the instrument as it stands and to test by experience the degree of its efficiency for the purposes it is designed to serve, let us yet frankly recognise that to all appearances its design is capable of large improvement, and that its present efficiency is probably far below that which it can be made to yield. I ask you to help in paving the way for the development of the League of Nations on such lines as experience and careful thought may dictate, and with this object in view to pass the resolution set out below.

F. N. KEEN.

5th September, 1919.

Resolution.

That in the opinion of this Society it is expedient that the League of Nations should, as one of its first acts, appoint a standing commission to consider and to advise the League upon questions relating to the revision of the Covenant which establishes the League and governs its constitution.

(*Read before the* GROTIUS SOCIETY *on November 4th*, 1919.)

In thanking Mr. Keen for his valuable paper, Sir Graham Bower said the Covenant contained provisions which might provoke war. The only way to diminish armaments was by the abolition of conscription. He was opposed to the mandatory powers in Art. 22 and to the labour provisions in Art. 23. He did not believe Congress would ever consent to placing its military forces under International control.

Mr. Whittuck was on the whole in agreement with Mr. Keen. It was evident that the constitution of the League was defective, but he thought it should not be revised until more States had become members. The danger was not that the League would do too much, but that it would do too little.

Mr. Knight sympathised with Mr. Keen, but was opposed to making a commission to revise at present.

Dr. Bellot agreed that as the League had come into being, a commission ought to be created for purposes of revision.

DISARMAMENT.

By MAJOR DAVID DAVIES, M.P.

The people of every country are crying for security against war or threats of war. Never again must it be possible for millions of young lives to be sacrificed unnecessarily, for splendid cities to be sacked, for fertile ground to be laid waste, or for the cost of freedom to be counted in crippling debts. To avert another world-wide massacre the nation is offered pledges, but it has had bitter experiences of the written word and it has learnt to demand a definite backing for every treaty. What is that backing to be? Must we once again collect colossal armaments, or can we abandon weapons which are so costly, so barbarous and so unreliable? To these questions the answers can alone be found in the lessons of the Great War and in the decisions of the Peace Conference.

It is quite clear that immediate general disarmament would not bring about universal security, but, on the contrary, would greatly increase the chances of war. The aggressive powers of a nation do not necessarily depend on soldiers and warships. If both the latter were abolished, the most dangerous nation would be the possessor of the largest numbers of commercial aeroplanes, the greatest mercantile marine, or the best resources for the production of explosives and poisonous chemicals. National disarmament must be a slow process, advancing with the increase of public confidence in the League of Nations, but if the League means anything at all, its effect on our present methods of defence will be revolutionary.

The League of Nations has been constituted to establish law and order throughout the world, just as the system of law and order has been evolved step by step in all civilised communities. In considering the methods to be adopted to enforce international authority, we should obviously study the evolution of civil security in Great Britain. Every citizen once armed himself against attack. Arms were a necessity, because the forces of internal order had not

been properly established. To-day very few people keep in their homes firearms or other means of protection against criminal intruders. A man who dug a moat around his house would be considered insane. All are prepared to trust to the efficiency of the police, whose wages they pay as an insurance against crime. So also will the day come when the State which maintains a large army will be looked upon with the greatest suspicion as being either mad or about to commit an unprovoked assault upon the rights of others. The League of Nations will be the big Insurance Policy. International law will be as effective and as well respected throughout the world as is the common law in the Great Britain of to-day. That is a vision of the future. What we should now consider is how we can eventually arrive at that epoch and to what extent, in the meantime, whilst reducing our war-like preparations, we can co-operate with other members of the League to obtain national security.

Two courses are open to us. Firstly, we can trust to our old system and depend on the strength of the army and navy alone; secondly, we can insist on the limitation of armaments described in Article 8 of the Covenant, supplemented by the creation of an International Police Force, which will be sufficiently powerful to enforce the decisions of the League, and therefore to make the world safe for all.

I will consider first the possibility of relying on our pre-war defences, because that is a course which will naturally find favour with a large number of people, partly on account of their conservatism and partly on account of their scepticism of the League's lasting success. Before the war we maintained a small army, and it is frequently said that the horrors of the war have been such that all other nations will be satisfied with a small *defensive* army in future. The actual number of troops with the colours is not, of course, a criterion for estimating a State's power for aggression. The number of trained civilians available, the organisation of the railways, the speed of mobilisation, the reserves of munitions and the efficiency of equipment are all most important factors. Moreover, in no event can small armies be considered as in themselves a sufficient guarantee against war. However small the force, professional soldiers would vie with one another in the production of new equipment and new weapons. As the world recovered from the last shock and as more money became available, these professional soldiers would find greater encouragement. Eventually the old international armament com-

petitions would be re-established. Who can estimate the cost and the suffering entailed by an armament competition under the newest conditions? What would it not involve? Compulsory service would be essential. Science would, as in the late war, be diverted from its other energies to the discovery of more effective means of extinguishing human life. Aeroplanes would be required by the hundred thousand, and would be of a type useless for civil purposes. Batteries of anti-aircraft guns would be emplaced around every city, while towns of less degree would be glad to raise their rates to provide protection from aeroplane attack. The income tax would be increased, in order that mechanical transport and horses could be subsidised. These are very few of the measures which would be necessary if another armament competition should commence. Moreover, the value of such efforts would be as doubtful as their cost would be high.

Under modern conditions even the most thorough preparations would be no guarantee of safety. The discovery of a new weapon by the enemy might nullify all our means of offence and defence. There were indications of such an occurrence during the Great War. To our complete surprise the Germans introduced poison gas, and by its aid achieved a substantial success. This was a weapon against which, at the time, we were powerless. Considerable experiment was necessary before our troops could be provided with any proper means of defence. Fortunately the Germans did not take full advantage of the possibilities of this weapon. They did not attack with gas on a wide front, and they did not employ the gas in its most deadly form. If they had kept their intentions secret until they could utilise a thoroughly deadly gas in a general attack, it was more than possible that they would have completely broken the Allied line. This is an example of a weapon which, when newly introduced, may render all other weapons useless. Another example is the tank. Many more examples were furnished at intervals during the development of the war in the air. Frequently one side possessed aeroplanes far superior to those in the possession of the other, although time never permitted the manufacture of an annihilating number of a paramount machine. The strides of invention are such that it is impossible to be certain that many other entirely new methods of achieving decisive success do not await discovery. The time, indeed, has come when there is no safety in national arms. We can no longer trust to apparently

overwhelming superiority in armaments to render our land inviolate. What is the alternative to the old methods? Let us examine the scheme embodied in the Covenant of the League of Nations.

The Covenant is admittedly not perfect. It is an attempt to draw up a Constitution for the Universe. Our faith in it must not be weakened by the knowledge that it is open to much improvement. National Constitutions have been centuries in the framing. Article 8 of the Covenant states that the members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations. It continues: "The Council, taking account of the geographical situation and circumstances of each member of the League, shall formulate plans for such reduction for the consideration and action of the several governments. Such plans shall be subject to reconsideration and revision at least every ten years. After these plans shall have been adopted by the several governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council. The members of the League undertake to interchange full and frank information as to the scale of their armaments, their military and naval programmes, and the condition of such of their industries as are adaptable to warlike purposes." The meaning of the expression "National Safety" is not clear. Does it refer to internal order, or is it a question of the protection of frontiers? The whole wording of Article 8 is vague. These proposals would not eradicate that old atmosphere of suspicion which has brought about so many wars. Nations who put their trust in the League are entitled to an assurance that the League will be able to enforce its decisions with promptitude. The proposals concerning armaments in Article 8 and elsewhere do not give this assurance. It is clear that the League must be provided with a force under its direct control which can be employed without the least delay against any State which defies its authority. It is also clear that nations must have forces at their disposal as at present to maintain internal order. Fortunately, soldiers are seldom called upon to maintain the authority of the law, but the knowledge that they are available in case of need creates confidence in the State and assures the sovereignty of Parliament. It follows, therefore, that nations cannot be deprived entirely of their armies. To ensure, then, that internal order is secured and

also that the League of Nations is provided with an effective sanction, a method must be devised:—

(a) To allow each nation an army sufficient to maintain internal order within its own boundaries and sufficient also to furnish its quota for the League of Nations when required.

(b) To ensure that the quota of any nation shall not be rendered useless by the employment of a new weapon of war by another nation.

(c) To provide the League of Nations with an adequate force for immediate use.

All the above essentials are incorporated in a scheme for an International Police Force. This scheme, which is given in the merest outline, requires careful examination, because our national security must always be absolutely safeguarded, and before we decide on any relaxation of our armament policy we must be certain that the alteration offers complete protection. Effective protection for civilisation against German aggression was finally secured when, after nearly four years of war and much sacrifice, there was established a supreme command and all our resources, military and economic, were pooled for the common cause. The organisation which secured a supreme command and pooled the Allied resources was achieved only by the sinking of many national prejudices and susceptibilities. Is this organisation now to be abandoned and are we to face competitive disintegration? Cannot we rather apply military unity to the common benefit of mankind as a permanent instrument of justice? Is the edifice so laboriously constructed during this time of stress and storm to be allowed to fall into disrepair and to become a mere incident in history? Let us consider how it may be preserved.

The great feature of the late war has been the extensive employment of science, which may at any time render existing armaments useless. The only possible way of preventing the latter occurrence in time of peace is to ensure that every new war invention is handed over to the League of Nations. The novel weapons of the last five years are capable of vast improvements and developments. The superiority of the Allied air force during the final stages of the war was one of the greatest factors of victory; and it is difficult to imagine to what extent science may perfect the existing air force. In poison gas, to which I have already referred, we may be faced with undreamed-of efficacy if the competition in armaments is allowed to progress unhindered. Other of the most recent intro-

ductions are the submarine, heavy artillery, and the tank. Even now, many men are doubtless striving to improve these weapons. Such is the effect of international competition, which can solely be ended by the handing over of these engines and their accessory munitions to the League of Nations. Mere prohibition of manufacture would be ineffective. When war broke out, nothing would prevent any nation, which so desired, from immediately commencing their production. If, however, large supplies were at the exclusive disposal of the International Police Force, it is unlikely that any nation or group of nations would be prepared to precipitate war, or would dare to question the decision of the League. I therefore suggest that the war's newest weapons—poison gas, warplanes, submarines, heavy artillery and tanks—should be ceded to the League to form the Headquarters' Force, and that no State should be allowed to own them or to make use of any new invention for war-like purposes. There should be no delay in handing over the new arms before they can claim long traditions. Vested interests have not yet been created on a permanent footing. Great disturbance would not be caused at present by the suggestion of de-nationalisation. Therefore the moment when they can most easily be transferred to the International Police Force is now. Time does not admit of the elaboration of the organisation of the Headquarters' Force, but I should suggest that the units comprising the force would be concentrated in different parts of the world, and would be held ready for immediate use. Attractive terms would be offered to the personnel to secure the best type of officer and man.

It cannot be too strongly emphasised that the above proposals refer only to the arms of the services which were created during the war or which were developed with the aid of science far beyond their former efficiency.

The cavalry, the field artillery, the infantry, armed with machine guns, and the auxiliary services, which constituted the pre-war army, would remain as national forces. The functions of these forces would be:—

1. To provide the national quota for the International Police Force.
2. To maintain internal order in their native country.

Such troops would not form part of the League of Nations Headquarters' Force, but would remain in their native countries except when on active service as quotas of the League. In determining

the numbers to be maintained by each State, many factors would be taken into consideration, such as its area, population and property. Each State would train the number of men assigned to it, in accordance with the traditions of its army, but the training would be subject to the supervision of the International General Staff. Supervision would ensure that a nation maintained its quota at the strength decided upon, and that no secret forces were in training. This supervision would also prevent the introduction of new equipment or munitions which might increase the efficiency of one quota to such an extent that it could meet and defeat the remainder of the force. All arsenals and munition factories would be open to inspection by the General Staff, who would use them when necessary for arming the quota of a nation other than that in whose territory they were situated.

Method of equipment would mark the main difference between the Headquarters' Force and its quotas. In the late war, science, often regarded as a curse, has provided weapons which make this distinction possible. Just as the possession of the rifle marks the difference between the soldier and the constable of to-day, so the possession of the new scientific weapons of war will draw the line between the international policeman and the national soldier of the future. It is difficult to prevent the secret manufacture of rifles, but it is easy to prevent the manufacture of tanks, aeroplanes, gas or submarines.

The naval portion of the International Police Force would be constituted in a similar manner. The Headquarters' Force would consist, in the first instance, of submarines, and, possibly, of the latest types of battleships, which no State would be permitted to own. Quotas of other warships would be maintained by each nation in a proportion to be decided upon by the League. If naval development is confined to the Headquarters' Force, we shall be protected from the great expenditure of pre-war days, which resulted from the fact that costly ships became obsolete after a few years and had to be relegated to the scrap heap.

The International Police Force would never be used to interfere with the internal affairs of any country, but would solely provide an effective sanction for the decisions of the Nations in Council. In addition to the military sanction, there would be the weapon of the economic boycott, which would sometimes be sufficient in itself. Every means of transport and communication with the outside world

would be denied to the offender, and no letters, telegrams, news, food or supplies of any kind would reach him. In cases where territorial aggression had been committed, the Headquarters' Force would be employed without delay. This would allow time for the mobilisation of the national quotas.

Before any practical steps can be taken to establish an International Police Force, a public opinion which will support the proposal must be created in every part of the world. The greatest resistance to the suggestion would probably now be found in America, which is the more saddening, because the President of that great Republic was one of the earliest and most powerful exponents of the principle of the League. There is obviously an impression in America that participation in an International Police Force would impair sovereignty, and would be specially antagonistic to the Monroe doctrine. It is not surprising that a distant people should shrink from entanglement in the difficult problems of Europe. I feel confident, however, that the sense of justice and fair play, the desire for progress, inherent in English-speaking nations, will eventually cause the people of America to play its part. In order that Great Britain may give a lead, we must first convince our fellow countrymen. If it can be shown that the people of this country are prepared to put entire confidence in the unanimous judgments of the Council of the League of Nations, and are willing to place the navy and the army at the absolute disposal of the League, the effect on the people of other nations will be overwhelming.

Every European country which took part in the war is now faced with bankruptcy. The accumulated wealth of many decades has been blown into dust. The call for retrenchment is heard on all sides, but unless an International Police Force is created, retrenchment may be our ruin. We may be deprived of proper security for the enforcement of the vital provisions of the Peace Treaty. Germany, recovering from the effects of the war, might prove defiant to weakly-armed Allies. There would then be only two ways of maintaining the sanctity of the Treaty. There would be the old way of going to war, and there would be the new way of submitting the matter to the judgment of the League. The old way would involve the resurrection of costly armaments, and it might even be impossible to arm ourselves in time. On the other hand, the new way would be of no value unless the judgment of the League could be backed by force. The cheapest means of obtaining that effective

sanction is by the creation now of an ever ready International Police Force. That is the road to sane retrenchment, and our expenditure would decrease year by year instead of increasing as before.

Various other aspects of disarmament have not been discussed, because my object has been merely to show the new interpretation which has been given to the old ideal by recent events. The greatest of these is the establishment of a League of Nations, whose Covenant seeks not only to prevent war, but to obtain co-operation among nations. In what sphere can co-operation be more fruitful than by pooling military resources in order to provide an effective sanction for treaties, decrease unproductive expenditure, and, above all, rid the world of the impending menace of war?

Resolution.

With a view to providing an effective sanction for the decisions of the League of Nations, securing the sanctity of treaties and reducing unproductive national expenditure, this Society is of opinion that the military resources of the members of the League should be pooled to form an International Police Force. This Society is further of opinion that all newly-invented weapons should be handed over to the League of Nations, and that national armies and navies should be reduced to the minimum necessary for the maintenance of internal order and for the provision of a fixed quota when required to supplement the Headquarters' Force.

(*Read before the* Grotius Society *on November 18th*, 1919.)

In thanking Major Davies for his striking and impressive statement and suggestions of a novel character, the Chairman said they were even more to the point than when written owing to the attitude of the United States. The world was going full speed backward, and some reduction in armaments was imperative.

Mr. Omond objected to the International General Staff on the ground that its strategic plans would be known to all the members of the League and so to any would-be aggressor.

Mr. Manisty said that at present every nation would demand and require a national army. Where was the International Police Force

to be located? Such a force must be in existence, equipped and located. He thought that all members of the League were under an obligation to pool all resources in case any members violated the law.

Sir Alfred Hopkinson, while favourable to the idea, doubted whether any nation would agree to a maximum quota. The Covenant should be retained as a standard to which the majority have given their assent. The economic boycott was a more powerful weapon. A super State was regarded as dangerous by the United States. He had predicted twelve months ago that the Treaty would not go through if the Covenant were based on International Force.

Dr. Bellot thought that with the present strong feeling of nationality and sovereign rights in both the Old and the New States, nations would refuse to surrender any particular weapon in which they were supreme, or any of their sovereign rights. The Covenant should be based, not on force, but on the public opinion of mankind.

Major Davies, in reply, admitted that perhaps his scheme was not practical politics for the moment. It was supplementary to Art. 8. An International Staff was a matter for military experts. Its members might be frequently changed. He advocated Constantinople as the seat of the League.

THE LEAGUE OF NATIONS.

The Work of Lawyers.

By C. A. McCURDY, K.C., M.P.

Perhaps the most useful work which lawyers can perform to assist in popularising the idea of a League of Nations would be to explain to the public as only lawyers can, the real meaning of the vocabulary of the League of Nations movement; what meaning, if any, ought to be attached to the phrase "A League of Nations"; what we mean by the sanctity of treaties, or the violation of international law; on what principle of law or equity are nations to be enjoined or compelled to submit their disputes to Councils of Conciliation or Courts of Arbitration.

If in this paper I venture myself to offer some suggestions as to the principles of law which underlie these phrases so loosely used in political discussion, it is not with any idea that I regard myself as competent to speak with authority on the subject. If I put forward my own views of the principles of law which must be understood if we are ever to have a rational conception of the proposals for the improvement of international relations now before the world, it is in the hope that definite statements of opinion will afford the easiest method by which lawyers more learned than myself may have their attention directed to the questions which require answer, and correct me where I am wrong.

The words "A League of Nations" appear to me to be entirely meaningless in themselves. One might as well speak of an Association of Individuals; the words convey no idea of the constitution of the league or association referred to, or of the purpose for which the league or association is proposed to be formed. The popular conception of the meaning of the words is, I think, some association of nations on a basis not yet defined, having for its purpose the prevention of future wars, either between the nations associated for

that purpose, or possibly over the whole extent of the inhabited world.

It is popularly supposed that this object is to be attained, not by any corporate union of the nations in question, but by a treaty or agreement to be made between their respective rulers. This idea is apparent in those passages of President Wilson's speeches in which he refers to the necessity of confining membership of the league to democratically governed nations, upon the ground that no confidence can safely be reposed in the promises or agreements of autocratic rulers. There appears to be no foundation whatever for the assumption that it is possible to secure the performance of agreements under all circumstances by the parties to them. In English law, in assessing damages for the breach of an agreement, the measure of damage is in some cases arrived at by a consideration of the consequences which must be presumed to have been present to the minds of the parties in the event of a breach, at a time when the contract was made. English law appears, therefore, to regard an agreement as something which in its nature is capable of being broken, and to regard the possible breach of an agreement as something which ought to be present to the minds of the parties at the time of its formation.

Another popular conception of the League of Nations is that it will consist of an association of States pledged to maintain and extend the existing system of international law which in itself it is conceived, if honoured by the observance of civilised peoples, would be sufficient to prevent future wars between the peoples of the world. This conception appears to me to involve a second fallacy: the existing system of international law not merely incidentally, but in its essential principles recognises the lawfulness of war; indeed, it makes the right of any people or nation to wage war at the unfettered and uncontrolled will of their rulers the test and criterion of an independent State; an association of independent States made for the purpose of abolishing war as a civilised institution would be a contradiction in terms. If the independent State loses the right to make war, it *ipso facto* ceases to be an independent State. The system of international law, what Grotius called the *jus belli et pacis*, is in fact a code of rules more honoured in the breach than the observance, intended to govern the relation of nations exercising the normal and lawful activities of war, and to regulate the mutual conduct of such

belligerents with neighbouring States who are supposed to have no concern in the quarrel, and who are known as neutrals.

The whole conception is fundamentally immoral. Under the new international relationship which the League of Nations is intended to bring about, war will no longer be regarded as a normal or natural occurrence; the nations will no more dream of subscribing to a code for the conduct of war than national States at present dream of drawing up codes for the perpetration of murder or theft, and the so-called rights of neutrals will disappear. No honest man, as Lord Parker has pointed out, can be permitted to regard himself as neutral in the presence of crime. If the doctrine of neutrality applied to murder, human life would be much less safe than it is at present.

If we are ever to found a new order of international relations in which wars will become impossible, the first step, as it appears to me, is not to maintain and extend the authority of what is known as international law, but to abolish the whole code as incompatible with the object for which a League of Nations is desired.

Another popular conception of the League of Nations, which has many distinguished exponents in this country and in America, is the idea that it is to be an association of peoples pledged through their rulers to submit every dispute that may arise between them to an arbitral solution. There seems to be no foundation in the history of municipal law for supposing that such an arrangement would prove effective, or even tolerable. No such obligation is imposed upon the individual citizen of any civilised country: indeed, the mere suggestion that a desire on the part of, say a prominent politician, to depose a political opponent should be referred to any court of arbitration or council of conciliation for settlement, would be regarded in any country of the world as ridiculous. We do not in national life either submit or agree to submit our disputes to arbitration. There are Courts to which certain disputes of a limited and definite character may be taken, but the general attitude of the State towards the quarrels of individuals is, "Settle your disputes as best you may, or leave them unsettled as you please, provided always that you do not break the peace."

On a fourth matter there seems to me much uncertainty in the minds of the public: opponents of the proposals for a League of Nations put forward as an unanswerable objection the view that it is impracticable to bring the proposed Society of States into full

subjection to a common sovereignty, and that in the absence of a sovereign body it is impossible to institute the reign of law. This may, of course, be entirely true as a corollary of the Austinian doctrine of positive law; I doubt if it has any real validity. The true sanction for the repression of crimes of violence, or for the observance of all general laws, as opposed to administrative ordinances, in any civilised State, is not positive law, but the common standard of morality from which statute or common law receives legislative or judicial recognition. It is untrue to say that murder in Great Britain is prevented by law; murder is prevented by the fact that it is intolerable to the conscience of the majority of the citizens; if it were otherwise the police and the assize courts would be powerless to protect human life. It is not the policeman who restrains the average citizen from acts of violence or dishonesty; the policeman and the criminal courts are only a convenient but quite unessential instrument for enforcing the common will.

The late Lord Parker, in a speech delivered in the House of Lords, has elaborated this view of what is the real sanction against crimes of violence in the national State, with all the weight of his great authority.

In my view the underlying principles of any League of Nations that is to change the course of history by preventing wars must be, first, a recognition of the principle that the overmastering restraint which operates on the minds of men, whether they be rulers or subjects, to restrain them from the commission of acts of violence, is a conviction, not imposed from without but springing from within, that the act in question is a wrong against the conscience of the person who is by that conviction restrained. The effectiveness of such a League must further depend upon the conversion of the major portion of humanity to a sense of the wickedness of war as an instrument for the settlement of disputes, for the aggrandisement of States, or for the satisfaction of ambitions and aspirations on the part of rulers or their subject peoples. There must enter into the minds of men the idea, at present strange and incomprehensible, that the same principles of morality which are expected to govern the relations of individual citizens in fact apply to the relations of those groups of individuals which constitute nations and States. At present that conception is repugnant to a large section of educated public opinion; the idea that the exercise of violence is a lawful attribute of sovereignty is firmly rooted in the minds of men.

A League of Nations which will be effectual to rid the world of war will rest, not upon any agreement, but upon a creed. It will be limited to peoples who are prepared unreservedly to express their acceptance of a new code of international morality. Eligibility for admission to the League will be determined by that consideration, and by that consideration alone. For those who see in the material structure of society, in the parliaments and the statutes, the law courts and the judges, the sheriff and the prison, the real guarantees for individual freedom and safety in the national State, this conception will appear Utopian and even absurd; for those who recognise that the ultimate sanction of social order is none of these things, but morality and morality alone, it will be obvious that the most useful work that can be done in connection with the propaganda of the League of Nations movement is the work of converting an unrepentant world to a sense of sin.

(*Read before the* GROTIUS SOCIETY *on December 9th*, 1919.)

Canon Ottley said, as he understood the Treaty, it had two main objects, international co-operation and the achievement of freedom and security. For two years he had been behind the line on the Western Front working amongst the soldiers and claimed to know their views. The vital point made by Mr. McCurdy was the call of an unrepentant world to a sense of sin. That was a great inspiration for him. War was a crime and Grotius had had the courage to say so. This was embodied in the Christian doctrine, but the organised Christian bodies had all failed to enforce the principle.

Dr. Bellot, whilst in general agreement with Mr. McCurdy, was totally opposed to some of the views expressed. He was not an Austinian. On the contrary, he believed that men were governed in their conduct not by the fear of the policeman or the hangman, but rather by the public opinion of the circle in which they moved. The rule of law must be established between States as between individuals within the State. He, however, dissented entirely from the view that International Law must be abolished as incompatible with the objects of a League of Nations. Even with the League wars would not only be possible, but probable. It was in the in-

terests not only of the combatants themselves but of neutrals—for the League might itself be neutral, having declined to interfere and having circumscribed the field of hostilities—that regulations should be framed for the conduct of belligerents, for the mitigation of the horrors of war, and for the establishment of the rights of neutrals. He regarded an aggressive war as a crime, but if war did arise there must be rules for its conduct.

Mr. Keen pointed out that war was contemplated by the Covenant itself and there was still a possibility of war. How, therefore, could we avoid laying down rules for war? It was desirable in his opinion to lay down methods to be employed in war. It was the function of the League to settle disputes, but the policeman still had a use in enforcing a habit.

Mr. Henriques said that the frame of mind suggested was impossible of attainment. We must rely more on public opinion, but there would always be a minority who prided themselves on opposing the majority, and they would have to be dealt with. So with nations, and therefore we must have the means of checking them. It was recognised that a defensive war was legitimate. Consequently some regulations must be made for its conduct. All were in honour bound to unite and crush the aggressor. He agreed with Dr. Bellot in the necessity of making regulations. Punishment for offences must be legalised and put on a proper basis. He referred to agreements with Trade Unions. We require first arbitration, and secondly, special machinery for enforcing the award.

Mr. Bewes suggested the term Brotherhood for League. The two primary motives were love and fear, and the latter, perhaps, was the greater inducement to action. Germany, for instance, was anxious to come in because she was powerless and wanted protection. If there was a code of war it should stand apart from the League. He regretted the League was based on racial foundations. There would be no neutrals.

Mr. Whittuck agreed with Mr. McCurdy and Canon Ottley in deploring the position of international morality. Whether by moral or religious means this ought to be our supreme object. In order to put an end to war we must improve education and re-write our history. Mr. McCurdy was mistaken in denying to International Law any force. He surely would not propose to abolish International

Law, which includes so much more than the laws of war. All law was dependent on morality, but law always lagged behind morality, Thus the League of Nations was founded on imperfect morality.

Mr. McCurdy, in reply, said he had framed his paper purposely on provocative lines. The general law rested on the common consent. The problem was how to restrain men from gratifying their lust of domination or passions. The present basis of our law was that war is right. But the League of Nations regards war as a crime.

ADDRESS BY THE RIGHT HON. SYED AMEER ALI ON ISLAM IN THE LEAGUE OF NATIONS.

Syed Ameer Ali: Mr. Chairman, Ladies and Gentlemen, you have been good enough to invite me to give an address on a subject which I consider to be of the greatest importance at this moment, when the question as to the future relations of the Nations of the World is still under discussion. I am sorry that I have not had time to put my ideas on paper, as it would have enabled me probably to co-ordinate my remarks much better than in oral discourse. Anyhow, if I happen to be discursive, I will ask for your indulgence.

I must confess that at the moment my hope in a League of Nations is rather weak. The victors in the great struggle, which has just ended, naturally desire to construct the Temple so that it may safely preserve their dominancy; the vanquished perceive no chance of worshipping within it until they have undergone a long penitential course in purgatory. Even one of the victors seems inclined to doubt whether an edifice so built will weather the storm of conflicting ambitions.

If, however, against all fears and doubts a League of Nations emerges from the region of abstract ideas and assumes a concrete shape, the question whether the door should be opened to the Islamic States will require insistent consideration.

Two Buddhistic States have, it is understood, already had their claim to participation recognised by the architects of the League. Are the Islamic nations to have a place in it? The great jurist whose name your Society bears would, I am afraid, have summarily ruled them out. But I hardly think you, collectively or individually, would condemn them without a hearing to exclusion from all rights which may spring from the establishment of a League of Nations. Both Grotius and Puffendorff had excluded the Islamic nations from the *jus gentium*; of the two, Grotius was probably the more in-

tolerant. If Pocock is to be believed, Grotius was the inventor of the story about Mohammed and his dove, which had been trained to pick peas from out the Prophet's ears whenever he desired to give utterance to his teachings.

One is grieved to find that in spite of a spirit of liberalism in the domains of thought and of a quest for truth in religion and ethics, the old crusading spirit, with its wild extravagance, is not yet dead in Christendom. Nor has the rapid growth of materialism made any change—perhaps the contrary. Only the other day we heard the exultant cry of the last Crusade in an atmosphere which might have been expected to be free from the taint of fanaticism or bigotry. And we still see in the Press eloquent appeals which carry us back to the days when the Cross carried fire and sword through the most flourishing parts of Western Asia. Naturally, the Islamic nations have to contend with many difficulties to establish their right and the justice of their claim to a place on the Amphictyonic Council that is proposed for the future government of international relations. It is with reference to this claim that I propose to offer a few words. The veil which has deliberately been employed so long to conceal the Truth must be lifted some time, however weak the hand which attempts it.

The first point to consider is, in what respect are the Islamic States less qualified than the Christian or Buddhistic States to be associated in the new League of Nations—the hope of a few, the dream of many?

A League is based on the fundamental idea of the co-operation of co-ordinate members acting under conditions of equality, and so far as possible of mutual consideration, and so far as possible of mutual confidence. A League of Nations composed only of a part of the nations of the world seems a farcical conception. Designed on that basis it is bound to end in disaster. To call again a Council of the four or five big States with a cluster of minor and subordinate satellites a League of Nations would mean only the resuscitation of the dead and buried Holy Alliance.

Assuming, however, that there is a sincere desire to establish a real League of Nations, to do any real service to humanity, it must include all civilised nations, irrespective of race or religion. Is Islam (using the word to connote the same idea as is implied by the term

Christendom) by its origin, its ideals, its work in the past, its potentiality in the future, entitled to claim an equal place on the League with Christian and Buddhistic States? The answer to this question requires the clearing up of many misconceptions, and if I can help in removing even part of them, I may hope to be doing a little service in the cause of humanity and justice. For this purpose I shall have to dive a little into the past.

Now take the question of religion professed by the Islamic States. It is in close affinity to Christianity; its traditions coincide with those of Judaism, and to a large extent with those of Christianity. There is no parting in the traditions until we find Christianity leaving its old home and being transplanted into Western Europe. Its ideals are the same, the uplifting of humanity, elevating it to a standard which would be accepted by all the best thinkers and masters of the world. Its early history is such that no one can be ashamed of it. The Teacher of Islam has proclaimed that humanity is one of the rules of life. He himself said that the man who saves one life saves the lives of mankind. To say that his religion was spread by the sword is one of the fabrications which have to be attributed to Christian writers. How did the religion spread? That is the first question you have to ask. By the sword? That is contradicted by the facts of history. The first move was towards Persia. The people of Mesopotamia, under the guidance of the Persian Sovereigns, were trying to help their kinsfolk in the Eastern Provinces of the Arabian Peninsula. The first conflict between the Moslems and the Hivites was due to the aggressive attacks of the tribes from the north. Once Mesopotamia was conquered an order was given by the Caliph that the Moslems were never to cross to the east of the Zagros Mountains. The Persians were not content; and the progress of the Moslems may justly be compared to that of the British in India. In the west the conflict with the Byzantine Empire arose in this way: a Moslem envoy on his way to the Court of Heraclius was murdered by the Ghassanides, a Christian tribe subject to Byzantium. A Moslem force was sent to exact retribution; in fact, to use a well-known modern expression, a "punitive expedition" was despatched against the murderous tribe—a common method to-day. The Byzantines came to the help of the Ghassanides, and the war between Christianity and Islam began, which has continued to this day. Is there any Christian

nation which has hesitated, at any period of history, to avenge the murder of its envoy? When the first Caliph sent his troops to avenge the outrage what order did he give? The order he gave should, I think, be brought to the notice of Christian nations who are either fighting or engaged in "punitive expeditions" all over the world at the present moment. "See," said the aged Caliph, "that thou avoidest treachery. Depart not in any wise from the right. Thou shalt mutilate none, neither shalt thou kill child or aged man, nor any woman. Injure not the date-palm, neither burn it with fire, and cut not down any tree wherein is food for man or beast. Slay not the flocks or herds or camels, saving for needful sustenance. Ye may eat of the meat which the men of the land shall bring unto you in their vessels, making mention thereon of the name of the Lord. And the monks with shaven heads, if they submit, leave them unmolested. Now march forward in the name of the Lord, and may He protect you from sword and pestilence." Contrast the humanity of this command issued in 634 of the Christian era with the cruelty of Christendom in Western Asia in later ages. When the Prophet was established in Medina he granted a charter to the Christians of Najran, which has formed the model for all the charters of toleration granted by Moslem sovereigns throughout the past centuries. He undertook himself and enjoined his followers to protect the Christians, to defend their churches, the residences of their priests, and to guard them from all injuries; they were not to be unfairly taxed; no bishop was to be driven out of his bishopric; no Christian was to be forced to abandon his religion; no monk was to be expelled from his monastery; no pilgrim was to be detained from his pilgrimage. That was the charter he gave. I am giving you its substance in order to save time. Do you call that a persecuting religion? Do you call that a religion of the sword, and say that the Islamic nations are not entitled to be included in the League of Nations which you propose to put up now at the present time after the cruelest war the world has ever seen? The invasion of Egypt was due to the raids which were committed by the Byzantines after Syria had been conquered. These raids made the occupation of Egypt essential for the security of Syria. Just as England found it necessary to conquer various parts of India, were

the Moslems compelled to go forward. The deliverance of Spain by the Arabs was due to the appeal of the Spaniards themselves. The land was groaning under the tyranny of the Visigoths. The Jews were in a state of slavery, the people were ground to the earth; you have only to go back to Dozy's Spain to see what the condition of Spain was when the Arabs arrived. The Moslem conquest brought to Spain the blessings of culture, toleration, and development, and this fact has been recognised by every student of history. The Arabs' work in Spain is a marvel in the annals of the world. They turned it into a garden; they covered the land with colleges and universities; they built aqueducts and canals, the remains of which still excite admiration. Has any nation, ancient or modern, a better record?

Now we come to another point. There was no real Christendom before the Crusades. In early times when Charlemagne ruled over Western Europe and when Harun-ar-Rashid was Caliph in Bagdad, there were interchange of courtesies between those two great sovereigns, which furnished the most hopeful auguries with regard to the future relations of Islam and Christianity. It is also well known that Mamûn, Harun's son and successor, sent to Charlemagne the keys of the Temple in order to keep Christianity and Islam so far as possible together in the work of uplifting the human race. Had it not been for the wars which came afterwards, probably a League between Islam and Christianity would have been started then and have been of benefit to the world, but the Crusades fell on Western Asia like an avalanche. The worshippers of the Cross, supposed to be the symbol of peace, destroyed by fire and sword on their march to Jerusalem all who came across their path; neither sex or age evoked any feeling of humanity; flourishing cities were burnt to the ground; the seats of learning were destroyed by fire; the mosques were reduced to ashes. The horrors of the Crusades are described not merely by Arabian writers; William of Tyre, and in modern times, Michand, have told us of the enormities committed by the Crusaders.

When the Caliph Omar captured Jerusalem in 636 he accorded protection to every Christian, with freedom of worship, and protection against wrong and injustice. When the Crusaders captured the city what happened? 70,000 Moslems were slaughtered, the Jews were burned in their Synagogue and the Pope's Legate rode through the

streets running with blood, and then a Te Deum was sung, just as a Te Deum was sung the other day in the capital of the British Empire on the fall of Jerusalem, which includes vast millions of Moslems. When Saladin recaptured Jerusalem how did he treat the Christian population? He liberated all the Christian prisoners, provided them with food, clothing, and nourishment, and gave them money in order that they might betake themselves to their homes. Spain had been turned into a garden by the Moslems. Cordova and Granada were the home of culture, civilisation, learning, and the Arts. In 1499 Granada was taken by the Spaniards, and the fate of the Moors is written in the pages of Condé, Dozy and other writers. Some, perhaps, have read Stanley Lane Pooles's book. Islam was absolutely wiped out in blood and fire in 1499. For two centuries the persecution was terrible. They were burnt alive, they were suffocated by the smoke of fires within the caves in which they took refuge. In the 17th century they were at last driven out, Jews and Moslems, from the country which had been their home for eight centuries. Such was the treatment of Islam by Christianity. In 1453 Constantinople was conquered by the Ottoman sovereign, Mohammed II. What did he do? Shortly after the city was taken he granted a charter of which any nation may be proud. It declared the person of the Greek Patriarch inviolable and exempted him and the other dignitaries of the Church from all public burdens. It assured to the Greeks the use of their churches and the free exercise of their religious rites according to their own usages. Full liberty was accorded for the exercise of their professions, and every department of State was open to them. Compare Spain and compare the treatment by the Turks of those whom they had conquered. In Spain they were absolutely wiped out; there was no mercy shown to them, no humanity; they were burned at the stake or driven into caves where they were suffocated by smoke. The Jews driven from Spain found an asylum in Turkey, where they throve and prospered. The treatment of the Christians within the Ottoman dominions might be compared with advantage with the treatment of Christians by Christians in Christian Europe. The Ottoman Sultan, Selim III., two centuries later issued a fresh charter for the protection of the rights of the subject races. He declared: "It is permitted, as of old, by the decision of the Holy Fetwa, as well as by my imperial order, that all churches, monasteries and places of pilgrimage, under

his jurisdiction, may freely exercise their religious rites; and no civil officer, or other person, shall interpose any hinderance." In 1838 Sultan Mahmoud issued the new regulations which placed all his subjects, Moslems, Christians and Jews, on an equal footing. When did the Catholic emancipation take place in England? It was later, I think.

Mr. Henriques: 1829.

Syed Ameer Ali: The new order in Turkey was in 1838, and the Catholic emancipation, as I am just reminded, was in 1829, so I am not far off in comparing the two changes. From 1838 there has been constant improvement. I can safely assert that ever since the establishment of Turkish power no difference has been made in respect of religion or race among any of the subject races. In 1846 secular education was separated from religious education in Turkey, and a very competent writer, whose name you may probably be familiar with, James Baker, says that it was the beginning of a new life, of a modern life in Turkey. Another writer says that if the Moslems of Turkey had treated the races whom they conquered in the way in which they were treated in Europe, probably there would have been no "Eastern question." In Europe it was the rule of the conqueror to try and bring about "assimilation." From the time of Louis XI., well on into the time of Louis XIV., there was an incessant effort for the purpose of reducing all the races and all the religions existing in France into a homogeneous whole. It was the same in Spain and in Russia; in fact, among all the nations of Europe, not even excepting England. What did the Moslems do? They left every nationality and every community subject to their own laws, under their own dignitaries, to the enjoyment of their worship under their own religious teachers. What were the Capitulations? The Capitulations were the guarantees which were given to all foreigners on coming into Moslem countries for purposes of trade and commerce. The Capitulations owe their origin to the Moslem law. It recognises two classes of subjects, firstly the Moslems, second the non-Moslems who have taken the oath of allegiance to the Sovereign. Foreigners visiting the country are called *muslamens*, as they are under the guarantee of protection. This guarantee given by the humblest Moslem allows a visitor to live in peace and entitles him to the protection of the State. When the Moslem Sovereigns established themselves in different parts of the world and foreigners

came to Islamic countries they gave these visitors the *Amân*, the guarantee of protection, and so long as they lived there and worked there and so long as they remained on terms of amity they enjoyed the privileges of the guarantee. Those were the Capitulations which in later times were made use of by European nations for the purpose of preventing the Moslem States from either imposing any taxes on or keeping order among the foreign communities; and yet there was no credit given to the Moslems for either liberalism or consideration for the rights of others.

About Persia I have said nothing as in a lecture recently delivered at the Central Asian Society, I have tried to show the place she holds in the history of development and her right to be included in a League of Nations. I am dealing with the question of Turkey because she is one of the States whose claims will have to be considered, and in view of what Mr. Balfour said the other day in the House of Commons, we may safely assume that, however crippled, however mutilated she may be, an independent Turkey will be left. She will be left because her destruction would be, in my opinion, a real calamity to the great Empire which includes 100 millions of Moslems within its ambit. The ferment which is going on at this moment among the vast Moslem population within the British Dominions, not only in India but in other parts of the world, shows the keen interest they feel in the fate of Turkey, and no British statesman will find it possible to ignore their feelings without grave detriment to our world-wide Empire.

With regard to Turkey, it is necessary to call attention to the difficulties that have been sedulously placed in her way to keep pace with Western nations. Ever since 1798 Turkey has been subjected to a war with Russia, or wars created by Russia, periodically at intervals of twenty or twenty-five years. There was a war in 1798, another in 1812, again in 1829, in 1849, in 1856, in 1877, and a war brought about by Russia when Greece, without any provocation, invaded Turkey in 1897. In 1911 Italy, without the shadow of justification, invaded Tripoli. She had not even the plausible excuse of trying to liberate an alien nationality. In 1912 came the Balkan war. A nation which could survive all these destructive wars, you must admit, must possess some virility, some vitality, to have withstood all these onslaughts. And as Baker says, when there was no war, there was incessant intrigue amongst the subject races to excite

them to rebellion. I will read to you a significant passage from his book: "Periodical wars between the two countries, witnessed periodical dismemberment of Turkish territory, for the aggrandisement of that of Russia; and the intervals of peace have been occupied by the subtle energy of secret societies, placing every possible obstruction in the path of Turkish progress by agitating and compelling her subjects into rebellion." There is one other remark of Baker I should like to read. In his time there was wild agitation in the House of Commons and outside in the country about the so-called Bulgarian atrocities, and as we know an enthusiastic statesman had succeeded in raising an unbalanced outcry. Baker says: "If the British House of Commons had to legislate for nineteen Irelands, instead of one, it would give some idea of the difficulties of government in Turkey; and some of its members would then, perhaps, be more just in their criticisms, and generous in their judgment, on that unhappy country."

The Chairman: What was the date of Mr. Baker's book?

Syed Ameer Ali: 1877, just about the time when the cry of "Bulgarian atrocities" was raised for condemning Turkish rule and the Turkish nation. No one cared to study the true story given by British representatives in Turkey. If you want to know about Bulgarian and Balkan atrocities you should read the account given by English doctors and English nurses who went to nurse the Turkish sick and wounded in the war of 1912. The nineteen Irelands of which Baker speaks were the creation of the Western Powers and of Russia. In 1849 or 1850, under the advice of the British Ambassador, Turkey took over charge of Kurdistan, some districts of which are inhabited by the Armenians. The conflict between the Kurds and the Armenians had become extremely bitter. The Kurds were a pastoral tribe, and what is happening to-day in the Punjab was happening in Kurdistan. The feud between the Hindu moneylender and the Pathim mountaineer will give you an idea of the feud between the Armenian and the Kurd. The scenes described by Mrs. Flora Steele in her "Tales from the Punjab" occurred every day in the wilds of Kurdistan. Under the advice of and some pressure from the British Ambassador, Turkey took charge of Eastern Kurdistan. In 1850 an American missionary travelled in the country; he spent, I think, four years there, and his experiences are printed

in the Journal of the American Asiatic Society. It will repay study. He speaks of the boon the Turkish Government had conferred on the country by the introduction of law and order into those wild mountainous districts. In 1856 came the war which Nicholas forced upon Turkey, and then commenced the series of manipulations and intrigues to get up a rebellion among the Armenians. And this has gone on and on until to-day it has destroyed the resources of Turkey for improvement within its own dominions. It has destroyed the possibility of pacifying the people. It has intensified the bitterness of the subject races. Every means of propaganda, fostered and nurtured from abroad, have been placed in the hands of the insurrectionists. False statements have been produced in every newspaper in Western Europe; cinemas have been "faked up" in America and disseminated by thousands in England, and no opportunity has been given to the other side to answer the allegations of murders and massacres. Upon those one-sided statements and one-sided allegations that Islamic country is to be deemed to be outside the pale of the *jus gentium* and the League of Nations. I say that you have no right to exclude a nation without giving that nation an opportunity of answering those charges publicly. The Turkish Government has demanded an inquiry by an impartial Allied Commission to investigate the origin of these atrocities and the part played in them by Armenians, Turks, and Kurds. Mr. Morgan Philips Price, whose knowledge of that part of Asia is intimate and who speaks of most of the events as an eye-witness, in his work called "Revolution in Asiatic Russia," describes how, when the Russian troops advanced into what is called Armenia, the Armenians commenced to wreak vengeance on their Moslem fellow subjects; when the Russians were hurled back the infuriated Kurds arose and avenged themselves on those who had so cruelly maltreated them under the shelter of the Russian troops. I have to-day in my hand an account by a Russian officer, who describes the cruelties that were perpetrated by our Armenian friends. Those are matters which require elucidation before condemnation, and I submit that the Grotius Society should devote itself to a propaganda which would enable the party that has not been heard up to now to obtain a hearing. I submit that a League of Nations without the participation of all the civilised nations of the world would be an absurd idea; it would be no League of Nations. I submit that a League of Nations predicates the

conception that all civilised nations who have a past, who have the power of doing good and who have under their charge populations capable of development and civilisation and who are not on the same level as the Papuans or the Negroes, should have an equal place in the Temple of Peace.

The Chairman: Ladies and Gentlemen, I feel sure that in regard to one point we shall all be of one mind, that there have fallen from Syed Ameer Ali certain observations with which all of us may not be in unanimity, but I feel sure that we are all agreed in esteeming it a very great honour that he has come here to deliver to us an address so full of information and so manifestly the result of long and matured reflection upon a subject, as to which I think I may say, in regard to many aspects of which he is an authority second to none. His opinion upon many of the points which he has dealt with will be at all events for some of us conclusive. If I might indicate one line of observation—I do not like to call it criticism because it is not that—it would be this. I think Syed Ameer Ali devoted a needless amount of time, interesting though his observations were, in proving that according to the *jus gentium*, as we now understand it, the Islamic people ought to have a distinct and important place. Whatever may have been Grotius' opinion uttered very nearly 300 years ago, I take it that all of us have long gone beyond that point. The difficulty to my mind is this, and perhaps Syed Ameer Ali will, if he favours us with some observations in reply, be good enough to remove the difficulty which presents itself to my mind. No one, I think, would dispute that the Caliphate has played a magnificent part in history. Its early record is a record of civilisation at a time when, except under this rule, there were few traces of civilisation. Its work at Bagdad, its work especially in Spain, is magnificent. No historian would question that. The question I should like to ask in passing is, who destroyed the Caliphate? The Crusaders to some extent, but if I am not mistaken, according to authorities whom Syed Ameer Ali would respect, next to the Crusaders the greatest enemy of the Caliphate has been the Turks when they entered Europe. That historical problem, however, is beside the main matter according to my view. The practical question, as it seems to me, is that which was discussed in the last portion of Syed Ameer Ali's exceedingly interesting and valuable observa-

tions. The real question is, what is to be in the future the position of Turkey? Turkey may have had great difficulties, enormous difficulties; Syed Ameer Ali has proved that she experienced difficulties of a peculiar kind. This is a striking observation, "If the country were to consist of nineteen Irelands what would you do," considering the difficulty that we have with one Ireland. But would you leave a country made up of nineteen Irelands to itself with a confident hope that peace and happiness would come to pass in a short time? I do not put that question rhetorically, I put it only to give effect and point to what I am now going to say. Whatever may have been the history of Turkey prior to 1856, however much she may have been goaded into action to which she otherwise would not have resorted but for the intrigues of Russia, in 1856 she gave solemn promises as to reforms which were to be carried out. I wish one could be confident (Syed Ameer Ali will perhaps enlighten me as to that) that these promises were carried out. She gave at Berlin in 1878, if I remember rightly, similar promises, and again I doubt very much whether those promises were carried out. Whatever may have been the misdeeds of the Armenians, whatever provocative policy they may have pursued, Syed Ameer Ali would not deny that terrible things have been done to the Christian population. It may have been that they brought upon themselves some of these deeds, but what I should like to clear up is this. Could we safely, as a practical question, hand over Constantinople and Asia Minor and Palestine and Mesopotamia to the Turkish Government without obtaining from it guarantees of a stringent and trustworthy character? There may be a satisfactory answer to my question. It may be that the satisfactory answer cannot be given to all of these three portions of the Turkish Empire. It may be that satisfactory pledges could be given as to some portion of it. Upon these points I ask unfeignedly for information from Syed Ameer Ali. There is a further point in regard to which I walk in complete darkness. I am struck very much by the arguments which Syed Ameer Ali, here and elsewhere, has made use of in regard to the estimation in which the Sultan is held throughout the Islamic world. That is a most important point, and I should like to know whether in the view of all Moslems he holds that position. As I understand, there are two great Schisms dividing the Islamic world; one of those Schisms, as I understand, does regard the Sultan as being in

that position. I should like him to tell us whether that is the view taken by the rest of the Islamic world. I have ventured to make these few observations, not in the way of criticism, but with full acknowledgment of the very valuable character of the paper.

Syed Ameer Ali: Mr. Chairman, may I answer the last question first. The Moslem world is supposed to contain, at least that is my estimate, and I believe that estimate is believed to be correct by most learned Mohammedans, three hundred millions of people. It is divided into two sects. By the way, I contributed an article to the "Contemporary Review" for June, 1915, giving a juridical and historical sketch of the Caliphate. As I said before, the Islamic world is divided into two great sects, viz., Sunnis and Shias. I am leaving out the minor sub-divisions. The Shias believe that their spiritual leader appeared in the 9th century and has disappeared. He disappeared in a grotto at a place called Sumara, which has been taken possession of by British troops. This grotto is regarded by the Shia sect with extreme veneration. The Imam is alive but invisible. The Shias number, roughly, about thirty million; the rest are all Sunnis. They belong to the Communion which believes that the last spiritual guide has not been born yet. The Sunnis believe that he is to appear about the same time as Jesus' second advent. In the meantime the spiritual succession is continued from the Prophet by the different Caliphs. The Caliph is the spiritual leader; unless there is a Caliph the prayers are not valid. The spiritual leadership (the Imamate) is of two kinds or degrees; there is the chief Imam and the minor Imam. The man who reads the prayers is the minor Imam; the Caliph who gives validity to the prayers is the chief Imam. The Caliph, whether in Bagdad or Constantinople, is the man who imparts validity. The fact of his existence gives validity to the prayers of the congregation. In order to create a spiritual nexus between the Imam and the congregation, the existence of a Caliph is essential. The chief Imam must be spiritually and temporally independent.

Now I come to the other question about the Turks destroying civilisation. In 1258 Bagdad was destroyed by the Mongols. The Turks have no connection with the Mongols; they form two different branches of the Mongolian race. That is the mistake which is

made all round ; people confuse the Turks with the Mongols. Whilst Islam had been exhausted in her struggles with the Crusaders in the west, the Mongol avalanche fell upon and overwhelmed the Islamic world, destroyed Bagdad, the Caliphate, and for two years the Imamate did not exist. The Arab historian of the Caliphs bewails the fact that for two years there were no valid prayers offered, until the Caliph was placed on the throne in Cairo in 1261. He was scion of the house of Abbas, and the Imamate continued in his line until 1516. Selim I. was a great conqueror. He was a descendant of Mohammed II., who captured Constantinople. He was invited to Cairo, which was distracted by the disputes of the Mameluke Sultans of Egypt, to take charge of the fate of the Egyptian people. The Arabian Caliph of the time made a formal assignment of the Caliphate to Selim I. in 1516. He invested him with the robe of the Prophet; entrusted him the signet and staff of the Prophet, and placed him on the seat of Imamate. Not only the Sultan, but all the dignitaries, all the ecclesiastics, and all functionaries, civil and military, took the oath of allegiance to the Turkish Sultan. The keys of the Holy Shrine in Mecca were sent to him by the Sherif of the time and homage was paid to him. A sacramental oath was taken at the time the Imam was invested with supreme authority. You will find an account of it in D'Ohsson's "Tableaux Generale de l'Empire Ottoman." When the sacramental oath is taken it gives validity to the nexus established by the installation of the Caliph between the Imam and the congregation.

There is the same distinction between the Sunnis and the Shias as exists between Christians and Jews. Christianity waits for the advent of Jesus; the Shias wait for the advent of the last Imam. The Sunnis believe that their Imam is not born yet; the Jews believe that the Messiah has not yet come. Both Shias and the Sunnis believe that a time will come when deliverance will be made from all the sins and sorrow of the world.

The Chairman: I think you have made it clear to us.

Syed Ameer Ali: The second point is with reference to the promises made by the Turks in 1856, and not only in 1856, but at other times. What help did Western Europe give them to fulfil their promises? In 1877 Abdul Hamid destroyed the Turkish Parliament under the instigation of Ignatieff, the Russian Ambassador. Shortly before the Balkan War Turkey applied for the services of a

distinguished retired Anglo-Indian administrator and a staff of British officers to take charge of the Revenue and Civil Administration of Asia Minor. I believe everything was arranged. But England refused in deference to Russia's wishes.

Sir Alfred Hopkinson: What was the date of the application?

Syed Ameer Ali: I can give you the name. If I am not mistaken it was just before the Balkan wars.

Dr. Bellot: 1912?

Syed Ameer Ali: I should say before 1912. Turkey applied also to England for military organisers. That, too, was refused. No one suggests that Mesopotamia or Palestine or Syria should be restored to Turkey. Those provinces have been promised autonomous Governments of their own choosing, and I hope that those promises will be fulfilled. The question is about Turkey proper, the Turkey which is preponderantly Moslem all through. Constantinople has a population of 560,000 Moslems against 200,000 Greeks. Are you going to take that vast Moslem population away from Constantinople? As Grosvenor, who is an American, says in his history, Constantinople is to the Turks what nothing else can be, it is what Rome is to the Catholic world, it is more than Paris is to France, it is the life of the Moslem nation.

(*The Chairman having to leave, the Chair was taken by* Sir Graham Bower.)

The Chairman: Ladies and Gentlemen, there are one or two things I should like to mention about the very interesting lecture you have heard from Syed Ameer Ali. I am one of those who are grateful that the American Senate has undertaken a criticism of the League of Nations. I am glad that they have made reservations, and I greatly regret that the subject has not been adequately discussed in England. We followed a phrase blindly and accepted the phrase without looking carefully to see what is behind it. The League of Nations, as I understand it, is not an end in itself, it is merely a means to an end, and the end that we seek to attain is the avoidance of war. We all of us agree that unless we can find some means by which war can be averted, war will destroy civilisation. Up to the recent war the path that was travelled by those pacifists who desire to avoid war beginning, with the late Tsar of Russia, was the estab-

lishment of a juridical body at the Hague and the extension of the juridical powers of that body. The last Hague Conference contemplated actually making arbitration compulsory. The League of Nations breaks off abruptly from that juridical tradition and substitutes in lieu of a Court a political body, and that political body is in itself incomplete. Half of Europe is kept outside the doors without representation at all. Inside it there is representation of a sort. There is even class representation; special provision has been made under the Labour Charter for labour representation and labour rights and labour legislation, but the great force which stands for morality and peace in the world, the force of religion, is not in the League at all. Neither the Pope of Rome nor the vast community of Islam is represented. I do not put it so high as Syed Ameer Ali, three hundred millions—at all events it approximates to three hundred millions—and these are not represented. It is true that the Hedjaz is represented, but even the Hedjaz does not represent Arabia. The great province of Nejd, which contains the Waha-Bi sect, a most important province, is not represented at all, and will not accept the supremacy of the Hedjaz.

Syed Ameer Ali: The Moslems of India do not accept the supremacy of Hedjaz. They regard the Arabs as insurgents against their spiritual chief.

The Chairman: The vast Waha-Bi sect will not accept it, so that the Arab kingdom is divided to start off. Turkey and Persia are not admitted; their names do not appear on the list of the League of Nations. We have only a section of Arabia. There is no doubt whatever that Arab civilisation in the past and Mohammedan civilisation in the past stood for a great deal in Europe. The University of Cordova and the glories of Damascus and Spain are the foundations of European civilisation to-day. We get our learning from Cordova; medicine, astronomy, all the sciences came from Cordova, from the Mohammedan Caliphate. It is charged against the Turks that they are guilty of massacre. That is true, but they are not alone. I am not quite sure that after the events at Amritzar in India that we are very free to condemn massacre ourselves.

Syed Ameer Ali: I did not refer to it.

The Chairman: But I do. I am not at all sure that we are free

to speak of massacre ourselves; at all events we may say that, in the 19th century, in 1820, twenty thousand peaceable Mohammedan Rayahs, living peaceably and cultivating their land, were massacred by Greeks. The Greeks have massacred, as the reports of the Carnegie Inquiry tell us, as brutally and as badly as any Turks. In Russia to-day massacre is the ordinary means of government. It does not therefore become us as Christians to throw stones at the Turks. But whilst I consider that the highest British interest and the highest interest of peace require the adequate representation of Mohammedanism in the League of Nations, and not Mohammedanism only, Catholicism also, and Hinduism and Buddhism, I am confronted with the difficulty when I ask, how is it to be done? I do not see that it is possible to revert to the *status quo ante* at Constantinople. I believe truly that reforms were intended by the Turkish Government in Asia Minor and elsewhere, but I believe that they were blocked by the European Powers who did not want reforms, because they had territorial ambitions there. There is no doubt whatever the reforms that were intended in Macedonia were blocked by Germany and by Austria and by Russia. But that was not all. During the times of peace Constantinople was the home of intrigue and bribery. Every Embassy was a centre of intrigue one against the other. We cannot go back to that condition of affairs in which bribery was common. We know that the Committee of Union and Progress was bribed. We can name men who received large bribes in Germany. The briber is as bad as the bribed. We cannot reinstate that system of corruption that existed at Constantinople, and the question is, how are we to do it? We must protect the Caliph. Syed Ameer Ali will correct me if I am wrong, but I think about sixty years ago, the Law Doctors of Mecca ruled that India was a country of peace. Our present policy, if followed out, will abolish that ruling and convert India into a country of war.

Syed Ameer Ali: I am afraid conditions are becoming very strained.

The Chairman: Unless we can avert this calamity we will have the greatest possible disaster in India and all over the British Empire. But how to avert it? We cannot go back to the *status quo ante*. Turkey, if it is to exist and if it is to continue, if the Caliph is to maintain himself in the Mohammedan world, must be protected

in some way or other. The Government, the finance and the organisation of the country must be put in tutelage.

Syed Ameer Ali: That is the one point on which Moslem opinion is very different. Moslem opinion is that you cannot put it under tutelage.

The Chairman: That is the difficulty. If we go back to the *status quo ante* we bring about a condition of affairs which has brought about the downfall of Turkey.

Syed Ameer Ali: You need not go back to the *status quo ante bellum*. There is a middle course.

The Chairman: I do not want to use the phrase "Egyptianised Turkey." I am opposed to that.

Syed Ameer Ali: That would create great commotion.

The Chairman: I do not want to go as far as that. If we can put European officers in Turkey under the Sultan, under his control——

Syed Ameer Ali: She wanted British officers, and if we now give her the chance of peace on equitable terms without a tinge of vindictiveness she is sure to come back to us.

The Chairman: I hope so. For that reason I think it is the highest British interest and most important to the peace of Europe that we should.

Syed Ameer Ali: And to the peace of the world.

The Chairman: That we should devote our minds now to the consideration of some device for keeping alive and independent the Sultan as Caliph and head of the great Mohammedan Church.

Syed Ameer Ali: The great Sunni Church.

The Chairman: Yes, the Sunni Church. In a sense I take it that he is respected even by the Shiites in the same way as a Protestant respects the Pope.

Syed Ameer Ali: The Sunnis and the Shias have combined in this agitation.

Mr. Henriques: I think that the question which Syed Ameer Ali asked as to whether Islam should be excluded from the League of Nations can only be answered in one way, that is, it should not. If you are to have the League of Nations as at present made out, it does not consist of religions, but independent Sovereign States. Therefore, if they are to be independent Sovereign States, the Islamic State ought to be admitted. Egypt is not independent, and Turkey

is in a nebulous position. It seems to me from the reasons given that it will be necessary to have Turkey or some independent autonomous State to which the Caliphate could be given to quieten the Moslem world. What has been said about Turkey is this. It is said they made promises and they have never been able to keep them, and that there have been nineteen Irelands and so on. If Turkey is to exist it will have to be shorn of the nineteen Irelands, Turkey will be much smaller, and those countries which have been thorns in its side will have to be taken away from it and it will have to be smaller, more like the Eastern Empire in its latter days, a small State both in Europe and Asia. It seems that it ought to be an independent State. With regard to the breaking of promises by Turkey we can easily understand that. I cannot see why that should be a reason for its losing its independence. It did make promises at Berlin, and so did Roumania. Turkey broke promises, and Roumania too, but Turkey did make some attempt to keep them. Roumania made none. In spite of that Roumania is now to be made a much larger Power than before, and Turkey is to be destroyed. That does not seem to me to be a fair way of looking at matters. There is a prejudice against Turkey, but it seems now that we have got to a state when we know we have to recognise all sorts of bodies and States, and probably atheistic States, we cannot deny the right of an Islam State to have a fair existence. I cannot see how the question of the performance of promises which we prevented them from performing, should now be taken into consideration so as to allow us to destroy them. I do not like to say any more; I am speaking of a sect of people who have been treated in a different way by different nations. All that I can say is that we have been treated better by Turkey than by most of the other countries of the world—I am referring to the Jewish question. They have always behaved much better to us than most other countries; we have never been banished, and there is hardly a country from which we have not. In Turkey we have always received protection and justice.

Syed Ameer Ali: Always received with open arms.

(*Delivered to the* Grotius Society *on December* 16*th*, 1919.)

THE INTERNATIONAL LABOUR ORGANISATION OF THE LEAGUE OF NATIONS.

By Miss SOPHY SANGER.

I must confess to considerable trepidation in coming to read a paper to a learned society of experts in international law. I am no lawyer myself, though I have dabbled on the outskirts of certain branches of law. But as a layman, I can at least draw your attention to certain aspects of the new international labour organisation attached to the League of Nations under the Peace Treaty which deserve the consideration of students of international law, both from the point of view of international law itself and for their reactions upon the constitutional laws of the various States affected. I will admit candidly that in venturing to put certain points before you I am actuated more by a desire to learn than by a desire to teach. I hope to find my own ideas of the new international organisation and its tendencies cleared by your criticisms of this paper.

I will first refresh your memories by a brief description of the international labour organisation and its functions. This organisation is established by Part XIII. of the Treaty of Versailles, headed "Labour," and consisting of Articles 387 to 427. The organisation comprises (1) a General Conference, a session of which must be held annually, and (2) a permanent International Labour Office controlled by a governing body (Art. 388). The General Conference consists of four delegates of each State which is a member of the organisation. Two delegates represent the Government, one represents the workers, and one the employers of the State. The delegates representing employers or workers must be chosen in agreement with the most representative industrial organisations concerned. Each delegate may have with him for each item on the Agenda two advisers, who may speak upon their delegate's request or even take his place entirely while any matter is under discussion, and act and vote for him (Art. 389). On the governing body the same pro-

portion is maintained between the Government, employers' and workers' delegates. It consists of twenty-four persons, namely, six elected by the employers' representatives at the Conference, six by the workers' representatives, and four by the Government representatives. The remaining eight Governmental members of the governing body are chosen by the Governments of those States which are of the "chief industrial importance" (Art. 393). The governing body appoints a Director for the International Labour Office, and in a general way superintends the work of the office (Art. 394). The International Office will collect and distribute information on labour questions, issue publications, make the necessary arrangements for the Annual Sessions of the General Conference, and exercise such other powers and duties as may be assigned to it by the Conference (Art. 396).

The Conference may adopt, by a majority of two-thirds, either draft conventions or recommendations. Every State represented is bound to submit such conventions or recommendations within one year to its Parliament or other authority for action. The conventions must be embodied in laws, but recommendations may be dealt with as each State thinks best, provided that the Conference is informed of the action taken.

Any question as to the interpretation of this part of the Treaty or of any Labour Convention concluded in pursuance of it, will be referred to the Permanent Court of International Justice (Art. 423).

Such in outline is the new international labour organisation.

It is not the first international organisation of a Governmental character. Organisations such as the Universal Postal Union and the International Institute of Agriculture have been in existence many years. What then are the characteristics of this new labour organisation which put it in a position by itself?

(1) In the first place, it possesses the characteristics of an International Legislature to a far greater extent than any international institution formerly existing. It is true, for instance, that the Universal Postal Union, through its regular Congresses, has led to the adoption of international regulations concerning the conveyance of and charges for postal matter from one country to or through another. But those measures are rather of an administrative than a legislative nature. Can we anywhere find a precedent for, say, the Draft Convention on the Eight Hour Day adopted at the first International Conference under the new scheme at Washington last November?

Here is a measure of a highly controversial kind, containing twenty-two articles, drafted after the manner of an Act of Parliament. Having been adopted by a two-thirds majority, each of the forty-one States represented at the Conference is pledged to introduce legislation within the next twelve months to bring its provisions into effect. Should the Parliaments of any of those States throw out the Bills introduced for this purpose, it is true that no further responsibility rests upon the Government concerned. But let us compare this international arrangement with the powers of the United States Congress in respect of labour legislation. Congress has no power even to require the various State Legislatures to introduce Bills on a common plan for the regulation of labour conditions. Where it has been desired to establish a Federal standard of legislation on industrial or labour matters, it has been necessary to have resort to a device. For instance, in order to prohibit the use of the poisonous substance, white phosphorus, in the manufacture of matches, the Federal Government exercised its right to impose a prohibitive excise tax upon the use of that substance, and to prohibit the conveyance of phosphorus matches on inter-State railways, and their exportation from and importation to the United States. Similarly, in order to establish a general minimum age for the admission of children to industry, a prohibitive tax has been imposed upon the produce of all factories where children under fourteen are employed. Such devices—and even these subject to overthrow by the Supreme Courts on the ground of unconstitutionality—are necessary in order to set up an inter-State standard of labour regulation. The new international labour organisation seems to create, in this respect, a closer constitutional link between the different countries of the world than exists between the States of America.

Of course, demands have been made to enlarge the powers of the Conferences beyond the mere requirement that Draft Conventions should be submitted to national Legislatures for action. The International Trade Union and Socialist Conferences, held at Berne early in 1919, demanded the institution of annual Labour Conferences with "power to adopt binding resolutions within the scope of the powers conferred upon them." In the correspondence which took place between the German representative at the Peace Conference and M. Clemenceau on this part of the Treaty, this demand is brought forward and emphasised. Count Brockdorff-Rantzau, in his letter of May 22nd, 1919, said: "According to the resolutions of the International Trade

Union Conference, the International Parliament of Labour is to issue not only international conventions without legally binding force, but also international laws which, from the moment of their adoption, are to have the same effect (legally binding force) as national laws. The draft of the German Democratic Government endorses this resolution . . ." This demand raises nice constitutional questions. How far can any particular State, by treaty, undertake to encroach upon the sovereignty of its own Legislature by submitting certain questions to the final decision of an international legislative authority? I imagine that in many States, if not all, special constitutional amendments or Acts of Parliament would be needed in order to endow the international body with the powers in question. The Commission of the Peace Conference which drew up the scheme here considered, felt unable to enter upon this intricate problem. But it strikes me as very remarkable and significant that that Commission did go so far as to adopt the following resolution on the subject: "The Commission expresses the hope that as soon as it may be possible an agreement will be arrived at between the High Contracting Parties with a view to endowing the International Labour Conference . . . with power to take, under conditions to be determined, resolutions possessing the force of international law."

In this connection, an interesting point has been raised as regards the position of the United States in the event of their joining the international labour organisation. I have already referred to the absence of any power on the part of the Federal Government to impose upon the States federal laws regulating labour conditions. In order to meet this difficulty—namely, that, with the best will in the world, the Federal Government could not introduce legislation to carry draft labour conventions into effect—Art. 405 of the Treaty contains a special paragraph as follows: "In the case of a Federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only . . .," which, put into the language of practical politics, means that the United States Government, instead of introducing a Bill into Congress to establish (for example) an Eight Hour Day, as provided for in the Draft Convention of Washington (which it has no constitutional power to do), would merely send the Draft Convention to the forty-eight State Legislatures, with a strong recommendation that legislation on those lines should be adopted.

But since that paragraph was inserted, it has been suggested by legal experts that, although Congress cannot pass labour laws to apply over the whole Union, yet it can ratify treaties or conventions and enforce them everywhere. If this interpretation of the Constitution should be upheld by the Courts, the difficulty would be removed. The United States Government would not, it is true, introduce legislation to bring labour conventions into operation; it would merely procure the Senate's ratification of the conventions and enforce them direct. In this case the United States would be in a more convenient position in relation to the International Labour Conferences than any other country where such powers to enforce treaties might not exist.

We have therefore this peculiar situation. In the United States, where it was generally believed to be impossible for international labour conventions to be carried into effect, it may be found, if the United States join the labour organisation, that the decisions of the International Labour Conferences are directly binding without special legislation, subject only to formal ratification by the treaty-making authority, namely, the Senate. In this event, the relations between the United States and the International Conferences will conform closely to the desire of the workers' organisations that the conventions should have binding effect without special national legislation.

(2) The second important characteristic of the new international organisation to which I wish to draw your attention is its representative character. I have not been able to find a precedent for an international organ of government in which a certain proportion of the members were in fact elected by groups of interested persons. The delegates to the International Labour Conferences are indeed all nominated by their Governments, but the workers' and employers' representatives must be "chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries."

In all countries, then, where employers and workpeople are well organised, their delegates to the Conference will, in fact, be elected by the organisations concerned. It was clear from the care with which the workers' group at the Washington Conference scrutinised the credentials of workers' delegates upon whose position any doubt was cast, that the non-Governmental delegates will not be mere Government nominees—they will be genuine representatives

of their groups. Nor will the representative element be ineffective, for—(here again, I believe, for the first time in history)—the delegations to the Conference do not vote by countries; each delegate votes as an individual. Thus, not only may we find workers voting one way and employers another, even the two Government delegates of a State need not vote both on the same side on any question. We have then a body with something approaching legislative powers and one which the Commission of the Peace Conference itself desired to see endowed with full legislative powers—a legislative body then, let us say, not elected to represent persons grouped in geographical areas, but partly representative of special classes, empowered to deal with a certain special branch of legislation. The adoption of this principle—special legislation to be enacted by a special Legislature containing a strong direct representation of the interests mainly affected—may, I think, be found in future to have important reactions upon the constitutional systems of individual nations. It is a principle not accepted in ordinary systems of Parliamentary Government.

(3) The third point of interest to note is the means provided for ensuring the due observance of conventions once ratified and embodied in national legislation. It is here that the League of Nations itself comes in. Be it noted in passing that the international labour organisation is largely detached from the League of Nations proper. The organs of the League have no control whatever over the actions and decisions of the International Labour Conferences; it is true that the League of Nations pays the expenses of the International Labour Office and of the Conferences, but it does not appear to have any means of controlling the expenditure of those bodies.

The functions of the League of Nations as regards the enforcement of conventions are important. On receiving a complaint from a member of the organisation of the failure of any other member to secure the effective observance of a convention, the International Labour Office may first try the methods of correspondence and publicity. Should these fail, a Commission of Inquiry is appointed by the Secretary-General of the League of Nations. The three members of the Commission, namely, an employer, a worker and an impartial member, are taken respectively from a triple panel of representatives of employers and workers and of persons of independent standing, nominated three by each State. The Commission investigates and reports, and suggests what steps should be taken to meet the com-

plaint, and if necessary, what economic penalties might properly be imposed upon the defaulting Government. If the countries concerned object to the report, the matter may be referred to the Permanent Court of International Justice of the League of Nations. If necessary, any other country may take against the offending member the measures of an economic character indicated by the Commission or the Court. To bring this machinery into action, the complaint must be made by a Government. But as both workers and employers are naturally eager that the conventions should be carried out in foreign countries, it seems unlikely that a Government receiving representations concerning contraventions of a convention from leading persons or organisations in its own country, of whatever class or politics, would fail to take proper action. Complaints received by the International Labour Office direct from an industrial association of employers or workers can be dealt with only by correspondence and publicity.

This scheme is certainly interesting as an attempt to secure confidence and thus perhaps lead the way to a more thorough system of international supervision. States are as yet very jealous of any outside interference in their domestic affairs. Personally, I believe that the representative element in the Annual Conferences is the best guarantee of proper observance. No hushing-up in diplomatic cellars of contraventions will be possible. Visits from the international representative Commissions of *inquiry* may even eventually lead to more or less regular visits from representative Commissions of *inspection*. The whole standard of national inspection in some countries may be raised by the watchfulness of interested persons in others, and the fact that criticism must be faced every year at the Conference. If, as seems likely, the International Labour Office arranges to have permanent representatives or correspondents in every country, who would keep in touch with industrial associations as well as Government departments, serious negligence in observing a convention could hardly pass undetected.

I think I have said enough to show that the new international labour organisation is a very remarkable and interesting development and one which—from the point of view of those who desire to see close constitutional links between nations—is a very great advance on any international organisation existing before the war. The League of Nations itself does not possess the characteristics to which

I have drawn your attention. How is it that in the realm of industrial legislation a much more advanced form of international organisation has proved possible? The fact is, here is a case where the two groups chiefly concerned both wanted international regulation. The employers want uniformity of regulation. If they must arrange an eight hour day for their workers, they do not desire to compete with rivals in a neighbouring State who are subject to no such restriction. As Mr. Woolf has said in his book on International Government, "the business man in every country is a confirmed internationalist." On the other hand, the workers want a high standard of conditions of work established universally.

Many years before the war there was a movement towards an international standard of industrial law. But when, after elaborate diplomatic pourparlers, the nations did get together to discuss labour conventions, there was no life in their conferences. Neither employers nor workers were present, nor were they consulted. The two old Conventions of 1906, by which a number of countries mutually agreed to put a stop to the manufacture of phosphorus matches and to the employment of women at night in industrial undertakings, were welcomed enthusiastically as a first step. But they led to nothing. The popular movement beneath could not get the cumbersome diplomatic machine to work again. But now the outlook is entirely different. The introduction of the representative element has created an organisation teeming with life. The first Conference, held before the League of Nations was established, and under constitutional conditions that could not have withstood a determined attack by persons showing any ill-will, was a triumphant success. Employers, workers and Government delegates from some forty different countries agreed by large majorities (well above the necessary minimum of two-thirds) to six draft conventions and six sets of recommendations. The Conventions deal with the eight hour day, unemployment, the employment of women before and after child-birth, the night work of women, the age of admission of children to work, and the night work of young persons. The recommendations are concerned with unemployment, reciprocity of treatment of foreign workers, the prevention of anthrax, the protection of women and children against lead-poisoning, the establishment of Government Health Services, and the application of the old Convention of 1906 prohibiting the use of white phosphorus.

In addition, a great many other subjects were brought forward

tentatively—so much so that it became clear that the International Labour Office would be completely overburdened if the Conference insisted on all such points being considered at the next Conference. This year, in consequence, the governing body has decided that there shall be but one subject considered at the Annual Conference, namely, the protection of seamen. This simplification of the agenda will give a little breathing space for the organisation of the International Labour Office and proper preparations for the Conference of 1921. But the long list of resolutions brought forward by groups of delegates or individuals proposing different subjects for the agenda of the next Conference was an indication of the strong vitality of the Conference, that is, of the whole institution. Although at this early stage the governing body felt bound to put the brake on, and leave time for the proper permanent organisation of the office, it is not likely that the Conference will in future allow the International Labour Office to act as a drag upon its progress, nor will the governing body, consisting as it does of some of the most active and experienced members of the Conference, be in the least inclined to allow the International Labour Office to settle down to the placid routine of the typical Government Department, whether national or international.

This vitality seems to me the most hopeful feature of the new organisation. Even if the League of Nations itself should collapse, it strikes one as very unlikely that the labour organisation will be allowed to die with it. The cause of this special position is to be found in the fact that the organisation is not tainted with suspicions of secret diplomacy. All is done in the open, and the two parties most concerned can themselves govern its activities, and both parties are strongly determined—though maybe for different reasons—that a sound international standard of labour conditions shall be created and enforced.

(*Read before the* GROTIUS SOCIETY *on February 10th*, 1920.)

In thanking Miss Sanger for her paper, Professor Goudy said this was the first time a lady had addressed the Society, and he hoped it would not be the last. It would have been impossible for any male member of the Society to have surpassed Miss Sanger's presentation of the case. Apart from its labour organisation, there did not seem

to him much hope for the League of Nations. He questioned how far a uniform system could be imposed upon all countries. For instance, in India it would be impossible to impose the same regulations.

Dr. Bisschop pointed out the difficulty of the suggestion that the majority of the nations should bind the minority, whereby legislation could be set up for one nation against its will. He cited the Sugar Convention, under which penalties could be imposed.

Mr. Cole asked whether there was to be the same treatment for Western and Eastern conditions. Was it intended to regulate internationally, for instance, the introduction of Yellow labour into Australia?

Dr. Bellot questioned whether uniform regulation in some matters was practicable. Where aptitudes and conditions varied so greatly, it seemed impracticable to impose uniform regulations.

Miss Sanger pointed out that special provision was made under the Treaty for backward countries, and actually at the Washington Conference the peculiar conditions of both India and Japan were carefully considered and specially treated in some of the draft Conventions drawn up by the Conference. Questions of immigration would come within the powers of the organisation.